United States

Court of Appeals

for the Ninth Circuit

No. 12217

SAMUEL HARRY KASINOWITZ, Appellant,

VS.

UNITED STATES OF AMERICA, Appellee.

and Consolidated Cases

No. 12221

LILLIAN ADELE DORAN, Appellant,

VS.

UNITED STATES OF AMERICA, Appellee.

and Consolidated Cases

Transcript of Record

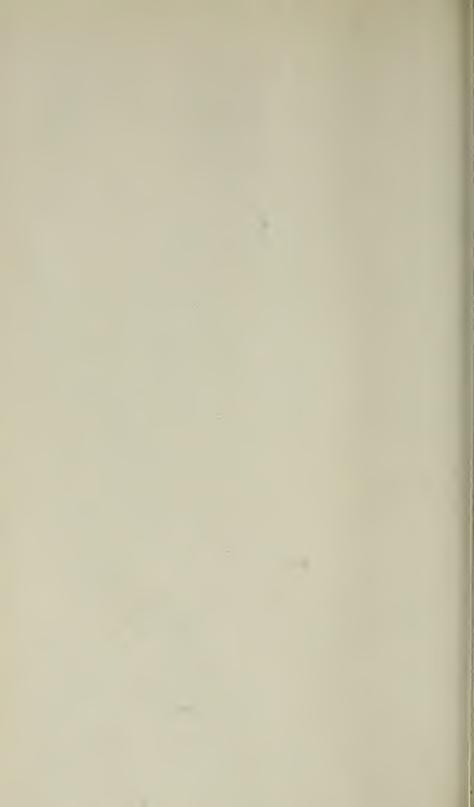
In Four Volumes VOLUME IV.

(Pages 1 to 237, inclusive)

MAY 3 L 1949

PAUL P. O'BRIEN,

Appeals from the United States District Court for the Southern District of California, Central Division



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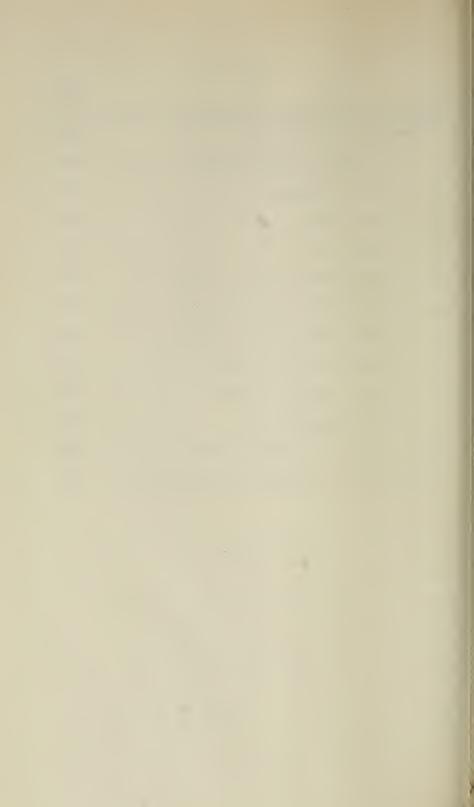
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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In the District Court of the United States in and for the Southern District of California, Central Division

Honorable Peirson M. Hall, Judge Presiding. Nos. 8786-PH to 8795 Incl.

In Re: BEN DOBBS, PHILIP BOCK, DEL-PHINE MURPHY SMITH, FRANK ED-WARD ALEXANDER, MIRIAM BROOKS SHERMAN, SAMUEL HARRY KASINO-WITZ, MRS. DOROTHY BASKIN FOREST, MRS. CHARLES HOLLISTER NOBLE and WESLEY BISSEY.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Los Angeles, California October 25, 1948

Appearances: For the Government: James M. Carter, United States Attorney, Los Angeles 12, California; and Ray H. Kinnison, Assistant United States Attorney, Los Angeles 12, California; and Max H. Goldschein, Special Assistant to Attorney General, Washington, D. C.; and Vincent P. Russo, Special Assistant to Attorney General, Washington, D. C. [1*] For the Respondents: Gallagher, Margolis, McTernan & Tyre, 112 West Ninth Street, Los Angeles 15, California; by Ben Margolis, Esq., and John T. McTernan, Esq. [2]

The Court: I see the United States Attorney, Mr. Carter, here.

^{*} Page numbering appearing at foot of page of original certified Reporter's Transcript.

moving parties, who are designated as Ben Dobbs, et al.

Is Ben Dobbs present? (Mr. Dobbs stood.)

Philip Bock? (Mr. Bock stood.)

Delphine Murphy Smith? (Mrs. Smith stood.)

Frank Edward Alexander? (Mr. Alexander stood.)

Is that your name?

Mr. Alexander: That is right.

The Court: Each of you, those names I have called? (Assent.)

Miriam Brooks Sherman?

Mrs. Sherman: Yes, sir.

The Court: Samuel Harry Kasinowitz? [6]

Mr. Kasinowitz: Yes, sir.

The Court: Mrs. Dorothy Baskin Forest?

Mrs. Forest: Present.

The Court: And Mr. Henry Steinberg?

Mr. Steinberg: Yes, sir.

The Court: Very well. The parties are all here.

* * * * [7]

Now, your Honor, first of all, as the motion indicates, particularly the portion on the last page, as I have stated to your Honor we haven't had time to complete our record on this matter, and our first request of this court is that we be given an opportunity to prepare affidavits and a memorandum of points and authorities in support of the record so that our motion may be complete.

I think that we have exercised all the diligence that could be exercised under the circumstances. My failure to have complete papers is certainly not due to any negligence on our part, any failure to act as promptly as it was possible [8] to act under the circumstances.

So before considering the merits of this motion, your Honor please, we would like to have your Honor rule on that request and give us a reasonable time to complete our record, in addition to getting out certain subpoenaes to produce evidence that we just haven't had time to get out.

That is our first request and suggestion in this matter, your Honor.

The Court: Do you wish to be heard?

Mr. Carter: I take it that the grounds of your motion, Mr. Margolis, are, however, as stated, that you are attacking the composition of the grand jury?

Mr. Margolis: There are three grounds stated. They are as stated—if I had had a little bit more time I would have, I think, phrased them a little more fully—but they are in substance as stated in the motion. That is correct. They are not limited to the challenge of the grand jury.

Mr. Carter: That is a question which was tried before your Honor in the Fishermen's case, now on appeal. I haven't checked recently, but I think the grand jury—if I am wrong the Clerk can correct me—is being impaneled presently in the same manner as it was being impaneled at the time of the trial of the Fishermen's case.

The Court: There appears to be three grounds. One is attacking the composition of the grand jury on the ground that [9] there was discrimination, and so forth.

The second ground, the grand jury is not conducting a bona fide investigation within the scope of its

power in the investigation herein instituted by the office of the Attorney General of the United States solely for political reasons and not for the bona fide purpose of investigating the commission of any crime.

Mr. Carter: I can dispose of that very quickly, by characterizing it as sales talk.

The Court: That can be disposed of by whether or not there is a statute prohibiting something which the grand jury is now investigating. I do not have before me the nature of the inquiry, but I suppose it could be answered by that.

The third ground appears to me to be the same, except the addition that they are denied the due process referred to under the Fifth Amendment because they are conducting an investigation to harass and annoy persons believed to be members of the Communist Party and to discriminatorily apply the law.

Now do you wish to be heard further?

Mr. Goldschein: Yes, may it please your Honor. On this question, the first proposition here raises a most unusual question, one that I have never heard raised before, and I doubt whether this court has ever heard it, the question of whether or not a witness may challenge the regularity of a grand jury that he is to appear before. That is the [10] question here.

The question is not a defendant who comes in and says that he may be prejudiced by a grand jury that is not properly selected. This is a witness who comes in and says, I want to determine first whether or not this grand jury whom I am summoned to appear before is properly impaneled. The witness doesn't

know what he is being subpoended to testify about. All he knows, may it please your Honor, is that he has a subpoend from the Federal Court to appear before the Federal grand jury, and he says that the Attorney General intends to vilify him, in substance. Why the whole motion is scurrilous and should be stricken.

A witness has no right to select his forum before which he will testify. He has no right to come into a court and say, show me whether or not this grand jury is properly selected from the body of the people of this district. He has no right to say, I am subpoenaed in here because the Attorney General doesn't like me.

Why there is nothing in this record here, nothing in this motion other than that the witness says he was subpoenaed at 7:00 o'clock in the morning. I don't know, if a Federal marshal can get up at 7:00 o'clock, can get up in time to serve a subpoena on a witness at 7:00 o'clock in the morning, I don't see what the witness can complain about. Is it the complaint that the marshal did serve him? Is it the complaint [11] that he doesn't want to answer the questions he hasn't been asked to answer as yet?

This motion simply says nothing other than, we want the court to make inquiry about the forum that we are going to testify before. We want the court to make inquiry now on the matter that we may be asked about.

The Court: Mr. Margolis, do you have any authority at all to support your proposition that a witness may challenge the grand jury?

Mr. Margolis: I haven't had time to check the

authorities, but I would like, with perhaps a little less heat and a little bit more consideration of the logic of the situation, to discuss the matter with the court. And I would also like to have an opportunity after such discussion to obtain those authorities.

The Court: That is the point. Before passing to a consideration of your request for preparing affidavits or further memorandum of points and authorities, can you submit some authorities to me on that, on that one point? If so, I will give consideration to them, and as to that one point I will put the matter over until 1:30 o'clock this afternoon.

Mr. Margolis: May we have until 2:00 o'clock.

The Court: I have a lot of other matters at 2:00 o'clock.

I will put it over until 1:30, and each side will have authorities on that one point. [12]

Mr. Margolis: Very well.

The Court: Very well.

Any other matters on the calendar, Mr. Clerk?

Mr. Carter: The witnesses will be ordered to return, your Honor?

The Court: The witnesses are ordered and directed to return to this courtroom at the hour of 1:30 o'clock this afternoon.

Mr. Carter: There may have been other witnesses who were subpoenaed whose names are not on this motion.

The Court: The only persons I am concerned about are the names on the motion. If there are any other witnesses they should be before the grand jury at this time and you may take the appropriate proceedings if they are not there.

Mr. Margolis: It may be, your Honor, that I received some phone calls and was asked to add names to this that I didn't act on solely on the rush of the matter and I will so advise the court this afternoon.

The Court: Very well.

The Clerk: We have some civil matters on the calendar, your Honor. [13]

October 25, 1948; 1:30 o'clock p.m.

The Court: The matter of the motion filed by Mr. Margolis on behalf of Ben Dobbs and others is on for hearing. [14]

Mr. Margolis: * * * *

* * * *

I also want to ask leave to amend my motion to include at least one additional name—two names, your Honor—both of whom were subpoensed for 2:00 o'clock this afternoon, not for 10:00 o'clock this morning, and both of whom are here I understand.

The two names I would ask leave to add to my motion are the names of Mrs. Charles Hollister Noble and Mr. Wesley Bissey. Both of those persons I understand are here. Both were subpoenaed for 2:00 o'clock, so I would ask leave to amend by motion to include those names.

The Court: Is Mrs. Charles Hollister Noble present?

Mrs. Noble: Present.

The Court: Is Mr. Wesley Bissey present?

Mr. Bissey: I am present.

The Court: Very well.

Any objection to amending the motion?

Mr. Carter: No objection.

The Court: You may amend it by interlineation.

Mr. Carter: If you represent Mrs. Davison we have no objection to inserting that name also. We can work out with [15] you some arrangement with reference to the time of her appearance, I am sure.

Mr. Margolis: I would like to add that name at this time, your Honor.

The Court: If there is no objection, you may do so.

Mr. Margolis: I am not sure of the spelling. What was the name, Mrs. Sidney—how do you spell it? Mr. Carter: D-a-v-i-s-o-n.

Mr. Margolis: It is understood, your Honor, that she is not in court?

The Court: It is understood she is not in court and is about to be confined.

Mr. Margolis: She is confined in the hospital at the present time.

The Court: She is confined?

Mr. Margolis: Yes.

The Court: As a result of a biological sequence, however, not as a result of any criminal procedure?

Mr. Margolis: That is correct.

The Court: Very well.

This should be stamped "filed", Mr. Clerk.

The Clerk: Very well, your Honor.

The Court: And it was handed up for filing at about 11:15 or 11:30 this morning?

The Clerk: Yes, your Honor. [16]

Mr. Margolis: Your Honor please, I attempted to do a rather hurried research job and I am prepared at this time at least to make a preliminary showing with respect to our right to raise this issue by the motion to quash on behalf of the moving parties.

I need hardly cite to your Honor the basic cases holding that under the power of the Federal Courts—

The Court: Let me see. Before we proceed, let us get the record straight in connection with this matter. Each one of the petitioners herein have appeared in response to a subpoena regularly issued, that is to say, insofar as anything except the jurisdictional grounds which you are challenging here is concerned—

Mr. Margolis: We are not disputing that.

The Court: And served upon them by the United States marshal, ordering and directing each one of them to be and appear at the grand jury room in this building of this district at a certain hour in connection with the grand jury investigation?

Mr. Margolis: That is correct, without conceding, of course, the validity of the summons.

The Court: Does anybody have a subpoena here? Mr. Margolis: Yes, we have a subpoena. We are not challenging with respect to these persons that

they were served, your Honor. [17]

The Court: I understand.

(The document referred to was passed to the court.)

The Court: The subpoena will be received and filed in support of your petition, without conceding your point.

Mr. Margolis: We have no objection to that being introduced as showing the fact of service and the type of subpoena that was served.

I will say that the only differences between that subpoena and the others is the differences in the names of the persons subpoenaed and that in some instances the persons were directed to appear at 2:00 p.m. of today and in other instances at 10:00 a.m. as of today.

The Court: Very well. In other words, they were subpoenaed to appear to testify to the truth and to give evidence before the grand jury.

Mr. Margolis: Those by that document were served. That document was served on Mr. Dobbs and similar documents, as I have indicated, were served on the others.

The Court: Very well. This will likewise be filed. Very well, Mr. Margolis.

Mr. Margolis: I just want to state briefly, your Honor, that we are relying of course upon the basic cases, the Glasser case, the Theil case and the Smith case, appearing respectively at 86, 90 and 85, Lawyers' Edition, particularly the first two, which hold that under its power of supervision [18] of trial courts the Appellate Courts have laid down the rule that any indictment returned by a grand jury, or any conviction by a trial jury—there being no distinction as far as the subject which we are discussing is concerned—is void if the jury, the grand jury in the one instance and the trial jury in the other, was not selected in a manner calculated to attain a representative cross-section of the community.

It is also the rule, your Honor—and I cite to you the case of United States v. Gale, 27 L.Ed. 857—that the exception or the challenge to the trial or grand jury must be taken at the earliest possible

opportunity. That may be waived under certain circumstances, but that it is both appropriate and in many instances necessary, in order to preserve the rights of the parties, that at the earliest possible opportunity to challenge them.

Before citing authorities dealing specifically with our problems, your Honor, I want to state what I think is the logic of our position. The function of a grand jury is to conduct an investigation or investigations for the purpose of ascertaining whether indictments should be returned and for returning indictments in the event that the evidence presented to the grand jury warrants such action.

If a grand jury is so constituted that it has no power to return a valid indictment, it would seem to follow, as a matter of course, that it is not a valid grand jury, that it [19] cannot effectively function, that it cannot interfere in and with the lives of citizens and other persons, require them to appear before the grand jury to testify, or for any other purpose.

I say that an invalidly constituted grand jury, having no power to return a valid indictment, is nothing more than a group of individuals sitting and using the name of the grand jury and is seeking to perform functions which they have not the power to perform. And if this grand jury, as we contend, was not selected in the manner required by law then it is just as if a group of citizens had walked in off the street, sat down and said, we are the grand jury, and if subpoenaes had been issued to the persons whom I represent to appear before that group of persons. Because an invalidly constituted grand jury

has no greater power to return a valid indictment than a group of persons who walk in off the street in the manner that I have indicated.

Now, frankly, we haven't found a case on all fours. On the other hand, we haven't been able to find anything which indicates that the law is other than as I have stated it to your Honor. Everything we have found indicates—

The Court: What about the rule?

Mr. Margolis: I don't know what rule your Honor is referring to.

The Court: The rules of criminal procedure. [20]

Mr. Goldschein: Rule No. 6.

Mr. Margolis: May I see it?

Mr. Goldschein: Surely.

(The volume referred to was passed to counsel.)

Mr. Margolis: I see nothing in that rule, your Honor, which in any way is in conflict with our position.

The Court: "The attorney for the government or a defendant who has been held to answer in the District Court may challenge the array of jurors on the ground that the grand jury was not selected, drawn or summoned in accordance with law, and may challenge an individual juror on the ground that the juror is not legally qualified. Challenges shall be made before the administration of the oath to the jurors and shall be tried by the court.

"A motion to dismiss the indictment may be based on objections to the array or on the lack of legal qualification of an individual juror, if not previously determined upon challenge. * * * *" It would seem to me that it comprehends that only a defendant, that is to say, a person who is likely to be or may be or is, or the person being investigated, one who is under charge or prospective charges, is the only one who can challenge a grand jury.

I, too, have researched the authorities and I have been unable to find anything in any of the authorities, in the [21] Federal cases or the State cases or the digest, where witnesses ever attempted to challenge a grand jury before, any more than a bystander, because, after all, a witness is no more a part of the proceedings than a bystander is.

Mr. Margolis: Before the Ballard case, your Honor, no one attempted to challenge the grand jury or the juries on the ground that they didn't contain any women.

The Court: Yes, they did.

Mr. Margolis: They may have attempted to but then the person who raised that challenge was in an even worse position than I am, because that had been attempted to be done and they were defeated on that in previous cases, under the rule that the jury was chosen in accordance with the rules of the court, and nevertheless the Supreme Court of the United States threw out the indictment.

I say here, No. 1, with respect to this rule, it does not preclude any other challenge. It is dealing with a limited subject and does not say that there are no other circumstances under which such a motion may be made.

The Court: I do not think any of the rules of law—and all of us, as lawyers, know that you do not

draft laws that way—to include some things and exclude all other things.

Mr. Margolis: That is right. I agree entirely with your Honor. [22]

The Court: Because no one can draw a law which can meet all the conceivable things that people may think of in the future.

Mr. Margolis: That is precisely so, your Honor. And this rule does not deal with the kind of a situation which is before your Honor, and therefore I say that it has no bearing on the question, and your Honor has to consider the question as it is, as a novel one that is being presented to your Honor, perhaps for the first time in any Federal Court—I do not know—but the novelty of the question, the fact that it is being raised for the first time, does not mean that it is not valid, and does not mean that it is not sound.

The Court: The novelty does not take away from the logic of the question, if the question has any logic.

Mr. Margolis: That is right.

The Court: I say, if it has.

Mr. Margolis: If it has, and we think that it has, your Honor.

We do have some authorities which indirectly, or the logic of which, your Honor please, supports us.

The Court: Let us hear them. * * * * [23]

Mr. Margolis:

Now certainly each one of these witnesses is affected by the grand jury by virtue of the fact that it is required to appear before the grand jury and testify by virtue of the fact that the testimony which they are required to give may be used against them, regardless of what the grand jury says about the

purpose of the investigation, and that they are therefore being placed in jeopardy.

The Court: How do I know what testimony they may give or which may be used against them? You cannot tell until they have been asked to testify. That question cannot possibly be here at this stage of the proceedings.

Mr. Margolis: I say this, your Honor, if they are an invalidly constituted grand jury then a witness cannot be brought in there and be required to make any sort of decision as to what he shall do under any circumstances which may face him. It is the very fact that he is being brought before the jury, being required to testify, that constitutes the injury to him, if the grand jury is an invalidly constituted body. [26]

* * * *

The Court: Mr. Margolis, suppose that a case were on trial and somebody were subpoenaed as a witness in the middle of that trial. Do you think that a witness could come in and challenge the impanelment of the grand jury on the grounds that you have asserted here?

Mr. Margolis: I would not undertake, without investigation of the law, to answer that.

The Court: What is the difference? This witness is inconvenienced. You have based your whole argument on the proposition that the witness has a right because, to wit, he is [32] inconvenienced. That witness is inconvenienced too.

Mr. Margolis: The difference between the two situations is this, which may give you the remedy in one and not in the other, that here we are coming in at the outset of the investigation before there has been any act of investigation on the part of the grand jury, which is far different from a situation in which the investigation has been completed and you are interfering in the middle of the process.

The Court: It is the right of the person. What right has the witness in connection with what the grand jury is investigating? They are here only as witnesses. They do not know whether it is the middle, the beginning or what. How do I know or how can anyone know?

Mr. Margolis: I would like to answer that question by asking a question, if I may.

If a group of citizens were to walk in here and say, we constitute the grand jury, and the United States Attorney were to say, I recognize them as the grand jury because I think they are a fine bunch of people, I think they will do what I want them to do, and he then goes out and gets some subpoenaes, to subpoena witnesses in to appear before that grand jury, is it your Honor's opinion that under those circumstances an individual would have to appear and could not raise a motion to quash?

The Court: Your question as stated is too ridiculous [33] even to require an answer.

Mr. Margolis: Well, if your Honor please, I say that a grand jury that is invalidly constituted has no greater legal authority than that kind of a grand jury, and if I am right on that proposition then my illustration is not a ridiculous one, your Honor.

The Court: Let us get to the point about the right of these witnesses here to challenge this grand jury. That is the only point that I want to hear about now. If they have that right, then I will pass to a consideration of the merits of your petition. [34]

Mr. Margolis:

I understand, your Honor, that you want me to limit myself to that one point.

The Court: Yes, to that one point.

Mr. Margolis: On that point I have finished.

The Court: Very well. Mr. Goldschein?

Mr. Goldschein: Yes, your Honor. [37]

. * * *

Grand Jury.

* * * * *

The Court: That seems to me to be the end of the matter, Mr. Margolis. The challenge to the grand jury is denied.

Mr. Margolis: Your Honor please, I would like to have, if I am denied the opportunity to argue further, at least I would like to have the record show that I am offering to produce evidence. I don't know whether this is in the nature of a demurrer to the motion or what the nature of this is, and I don't want to be precluded—

The Court: I take it as an objection to the granting of the motion on the ground of law which would be in the nature of a demurrer to the motion, the ground of law being, to wit, that the persons here who are making the motion are subpoenaed as witnesses and that the witnesses do not have the power or authority or are proper parties to any challenge to the [41] grand jury or motion to quash the subpoenaes. At least that is the ground upon which I am making my ruling.

Mr. Margolis: May the record show that I am prepared to proceed with proof on the motion, or in the alternative to make an offer of proof, if allowed to do so by the court, in order that by no lack of offer on my part may the record be deficient.

The Court: Do you have affidavits here?

Mr. Margolis: I haven't had time to prepare affidavits, but I am prepared to call witnesses and to submit proof.

The Court: In any event the motion on its face here would not be sufficient, nor of sufficient particularity, to proceed. It would have to be supported by larger affidavits and more facts stated in them than mere conclusions which are here alleged.

Mr. Margolis: I just haven't had time to prepare them.

The Court: Without otherwise passing on the sufficiency of your petition, I am denying it on the ground which I have just stated, to wit, that the witnesses and the parties here who are the movants are not proper parties and have no power or right to challenge either the composition of the grand jury or to move to quash the subpoena on the grounds which you have stated in summary.

Mr. Margolis: And I take it that my motion to produce evidence and to submit an offer of proof, in the event that is [42] denied, is denied by the court, is that correct?

The Court: The matter is disposed of by my denying the motions on the legal grounds, and there is nothing now before the court.

Mr. Margolis: There are other grounds of the motion, your Honor. I assume that those have not been disposed of yet.

The Court: They are all disposed of on the ground which, I have just stated, to wit, that a witness cannot challenge the composition of the grand jury or raise the questions which you have raised here or attempted to raise here.

Mr. Margolis: I understand I would have an opportunity to argue these other matters, but apparently not.

The Court: They are all included within the ruling of the court, that the witness does not have the right or the power, as I have indicated, to raise the question which you have raised.

Mr. Margolis: I have a due process point, and the Blair case does not say that a witness subpoenaed before the grand jury cannot raise due process of law. I would like the opportunity to argue the point, but if your Honor has already made up his mind and my argument can't change it—

The Court: It is not a question of making up my

mind. I have made up my mind on the point I have indicated, which is sufficient to dispose of your entire petition. [43]

Mr. Margolis: Including due process of law?

The Court: Including all of the points that you have raised. And that will be the order of the court.

The witnesses are now ordered and directed to be and appear before the grand jury and testify as required in the subpoena.

Mr. Goldschein: Right now?

The Court: You told me the grand jury is in session. Is it?

Mr. Goldschein: Yes, sir, the grand jury is in session waiting. We ask that the witnesses appear.

The Court: That will be the order upon each of the parties here whose names are in the petition as witnesses, except as to Mrs. Sidney Davison.

Mr. Carter: That is right.

The Court: Do all understand that? Ben Dobbs, Philip Bock, Delphine Murphy Smith, Frank Edward Alexander, Miriam Brooks Sherman, Samuel Harry Kasinowitz, Mrs. Dorothy Baskin Forest, Mr. Henry Steinberg, Mrs. Charles Hollister Noble, Mr. Wesley Bissey, are now forthwith ordered to be and appear before the grand jury and testify in response to the subpoena, the grand jury being in session on the sixth floor of this building.

Mr. Carter: That is right, the sixth floor.

The Court: Very well. We will have a short recess. [44]

(Short recess.) [45]

October 25, 1948; 3:30 o'clock p.m.

The Court: Mr. Carter?

Mr. Carter: If the court please, the grand jury has come to your courtroom. Ten witnesses were called before the grand jury and each of them have raised the question of their privilege in connection with questions asked of them. The foreman of the grand jury has instructed the witnesses to appear here in court. I believe they are all here, and the grand jury is here, and the grand jury court reporter is here. I would like to have a determination by the court on this question of privilege.

The Court: Very well. Mr. Goldschein?

Mr. Margolis: Your Honor please, I assume this is a separate proceeding. I would like to enter an appearance. Gallagher, Margolis, McTernan & Tyre, appearing by Ben Margolis and John McTernan. On behalf of the respondents in this proceeding, I would like to make a motion for a continuance at this time, your Honor.

The Court: I do not know who the respondents are or what the proceeding is.

Mr. Goldschein: May it please the court, by direction of and in the presence of the grand jury I want to call the court's attention to ten witnesses who have appeared before the grand jury, duly sworn and asked questions which they refuse [46] to answer on the ground that it would tend to incriminate them, some for the violation of a Federal offense, others don't know what offense it may incriminate them of.

Now the ten witnesses are: Mrs. Charles Hollister

Noble, Wesley Bissey, Ben Dobbs, Mrs. Delphine Murphy Smith, Mrs. Miriam Brooks Sherman, Philip Bock, Samuel Harry Kasinowitz, Mrs. Dorothy Baskin Forest, Frank Edward Alexander and Henry Steinberg.

We would like at this time, may it please the court, to introduce the official court reporter who stenographically recorded the questions asked and the answers made by the witnesses, and ask the court to instruct the witnesses, after hearing the witnesses, that they have no constitutional privilege involved in the particular question asked of them.

The Court: Has the Clerk called the roll of the grand jury?

The Clerk: No, your Honor. The Court: Will you do so?

(Roll call of the grand jury by the Clerk.)

The Clerk: There is a quorum present, your Honor.

The Court: And the foreman's name again?

The Clerk: Roland B. Ahlswede.

The Court: Mr. Ahlswede, you have heard the statement of the United States Attorney. Is it your desire to proceed at this time and present the matter to the court? [47]

Foreman Ahlswede: It is, sir.

The Court: Very well. You will call your reporter.

Mr. Goldschein: Mr. Drummond.

Mr. Margolis: Your Honor please, I have stated that I have a motion to make. Your Honor stated it

was premature at the time. I don't believe it is premature at this time.

The Court: We will swear the witness first.

E. L. DRUMMOND

called as a witness by and on behalf of the government, having been first duly sworn was examined and testified as follows:

The Clerk: Will you state your name?

The Witness: E. L. Drummond.

The Clerk: Your address, office or residence?

The Witness: 106 West Third Street, Room 626.

The Clerk: Take the stand.

The Court: All right, Mr. Margolis.

Does this complete the formalities of your presentment?

Mr. Goldschein: Yes, sir, it does.

The Court: Very well.

Mr. Margolis: Your Honor please, at this time I wish to make a motion for a continuance. We do not have an affidavit in support of the motion because there simply has not been time to prepare an affidavit. I think your Honor is cognizant of the fact that these people were in court here just an hour, an hour and a half ago, and that the events upon which the [48] presentment is based, or presentments are based, occurred within the last hour. We are prepared, if your Honor desires it, to give testimony under oath, however, with respect to the basis for a continuance. However, I shall state the basis as an officer of the court.

In connection with this matter there is pertinent an indictment obtained by the office of the United States Attorney for the District of New York, in the case of United States of America v. William Z. Foster, et al. We don't have that. We would like to have an opportunity to obtain certified copies of that indictment because they have a direct bearing upon the right to claim the privilege, your Honor please.

Second, there are newspaper reports to the effect, or there were newspaper reports to the effect, that Attorney General Clark had decided upon a course of action with respect to this indictment which was nationwide, in that he intended to obtain similar indictments throughout the United States. We have not had an opportunity to obtain either the newspaper reports, which certain of the cases indicate are in and of themselves admissible in proceedings such as this, nor the testimony of Mr. Clark to that effect that that is what he seeks, and which we will have to obtain by deposition.

Third, there have been other proceedings of a somewhat similar character in Denver and in Cleveland, concerning which we would like to adduce testimony, but we cannot do so [49] at this moment. We need to obtain either witnesses or depositions.

The Court: What do they show with relation to the privilege which counsel has stated the witnesses are standing on here in their refusal to answer questions? What would such proceedings show?

Mr. Margolis: The Denver and Cleveland proceedings or the other?

The Court: The Denver and Cleveland proceedings.

Mr. Margolis: I think the Denver and Cleveland proceedings, it is correct to state, refer to a different point, your Honor. The ones which deal directly

with the question of the incriminating nature of the evidence requested is the case of United States v. Terry, that I have previously referred to, and the statement of Mr. Clark, and I believe some other deputies—although I am not sure of that—that similar indictments would be sought.

The Court: I do not know the questions which have been asked. There is a provision in the statute making proceedings before the grand jury secret. I do not know how you know them.

Mr. Margolis: I am attorney, your Honor, for some of these people.

The Court: For the witnesses?

Mr. Margolis: Yes. [50]

The Court: Yes?

Mr. Margolis: I appear, your Honor, in their behalf and I did not understand that that attached to people who were seeking to obtain advice from their attorneys and who wanted to know how to proceed.

The Court: You are asking for a motion for a continuance now on the basis of some question which has been asked of these witnesses because it relates to some proceeding that is pending someplace else. I have no idea what the question was that was asked, so I cannot know whether what you are asking for has anything to do with it until I can hear at least what the question is that was asked.

Mr. Margolis: I see. I have tried to be cautious and not make my motion too late, your Honor.

The Court: Very well. Proceed to state the grounds.

Mr. Margolis: I did not want to waive my motion

by permitting the evidence to go in, but if your Honor thinks it would be better to consider it at that time—

The Court: Complete stating your grounds, or have you?

Mr. Margolis: No, I have not completed. Does your Honor wish me to state what my understanding of the questions is before there is testimony on that score?

The Court: No, if you will complete your statement of the grounds first.

Mr. Margolis: Second, if your Honor please, although [51] your Honor denied a motion to quash the subpoenaes this morning on the ground that the grand jury was improperly constituted, I think the situation at this moment is quite different because these people are placed in jeopardy by reason of the existence, or the alleged existence, of this grand jury, and its alleged attempt to function. If it is functioning improperly they are now persons directly and vitally affected by the conduct of the grand jury, as are persons who have been or who are threatened with indictment on the part of the grand jury, and we therefore wish an opportunity to subpoena records and to present evidence on the question of the manner of the selection of the grand jury. I won't repeat the grounds because your Honor understands what I am referring to.

The Court: Those that are stated in your written motion filed this morning, I take it?

Mr. Margolis: Well, with respect to the matter of selection, that is correct. That is a general statement of the grounds.

The second point, we want an opportunity to show, and we think that we can establish if given that opportunity, that this investigation is not for the purpose of obtaining information at all, that it denies due process to these witnesses because it is entirely a political maneuver on the part of the Democratic Administration, instituted particularly [52] at this time with relation to the election for the purpose of attempting to influence the election, not for the purpose of obtaining any information concerning any alleged crime.

We expect to prove in this connection that these investigations are being conducted around the country, with a man being sent around the country, at least one man—maybe more than one—to conduct these investigations in various localities where they might be deemed to be helpful in the campaign.

The Court: I would say offhand that that ground is entirely immaterial, if there is a statute of the United States concerning which a violation is being investigated by the grand jury.

Mr. Margolis: That is my point, and that there is actually under way no investigation of any violation that has not come to the attention of the grand jury, or of the United States Attorney, that there is any claim or alleged violation of any law which they are purporting to violate in this area, and that the investigation does not have that purpose.

Furthermore, I want to opportunity to gather and to present evidence based upon the statement of the United States Attorney indicating that he intended to and would follow out a policy of discriminatorily applying the law against those alleged to be mem-

bers of the Communist Party; that he would seek out any alleged violations with particularity to the [53] political affiliations of persons, and not in the ordinary course and scope of investigation; that this is part of a planned policy on the part of the United States District Attorney's office to discriminatorily apply the law against persons alleged to be members of the Communist Party.

Now this is really an equal protection point, your Honor, which however is based upon the due process clause of the Fifth Amendment which, as I understand it, has as a part of it the denial of equal protection of the laws, although it does not specifically refer to equal protection of the laws.

Now with respect to all of these matters—

The Court: In that connection, all violations of all Federal laws cannot be prosecuted at the same time, it would seem to me, and the United States Attorney has a right to select the matters which he will present to the grand jury, or the grand jury themselves may of their own initiative, institute an inquiry concerning any violation of any law without the assistance or aid of the United States Attorney or the Attorney General.

Mr. Margolis: I agree with you entirely.

The Court: They are an independent, autonomous body.

Mr. Margolis: I agree entirely, but the issue here is whether, as we claim, there is a design and plan on the part of the United States Attorney's office to discriminate.

The Court: That is wholly immaterial. [54]

Mr. Margolis: If your Honor please, if it were

merely planned that these respondents were being questioned and others had not been questioned, or this inquiry was being conducted and others were being conducted, I agree that that would not be a good ground. But where we claim, and we offer to prove, that this is a planned system of discrimination.

The Court: That is, you on behalf of the witnesses? Mr. Margolis: That is right.

The Court: And not on behalf of the defendants? Mr. Margolis: And that the purpose of this is to discriminate against them, to penalize them because of their alleged political beliefs.

The Court: It is wholly immaterial, as I stated. The grand jury is an independent, autonomous body. They have a right to institute an inquiry and regardless of any design or motive that the United States Attorney or the Attorney General may have, it is completely immaterial. The grand jury acts on their own account and by their own vote only.

Mr. Margolis: Part of our offer of proof is that in this case they did not act on their own account.

The Court: The grand jury has not acted yet, has it?

Mr. Margolis: In conducting this investigation, this all stems out of the United States Attorney's office in Washington.

Now, I want to make it clear, your Honor, that we make our [55] motion for a continuance on all of the grounds, and I want to again refer, so that it will not be overlooked in the ruling, to the fact that we are relying upon, and we want an opportunity to obtain, a certified copy of the indictment in New

York to prove that these defendants in these cases—because I think they are defendants at this point—that these defendants in these cases have good cause to apprehend the possibility of criminal prosecution upon the theory adopted by the United States, which theory I do not agree with but that is immaterial, upon the theory adopted by the United States in the case of United States v. Foster.

I think we ought to have our continuance at least in order to be given an opportunity to present that evidence.

The Court: Do you wish to be heard at this time, Mr. Goldschein, in that connection, or do you wish to proceed?

Mr. Goldschein: I would like to proceed.

The Court: The motion for continuance will be in abatement until the court is informed concerning the questions.

Direct Examination

By Mr. Goldschein:

Q. This is Mr. E. L. Drummond?

A. Yes, sir.

Q. Mr. Drummond, you are the official court reporter now taking notes, the testimony of witnesses, before the grand jury? [56] A. Yes, sir.

Q. You did-

The Court: Before you began to take your notes were you officially sworn as the reporter?

The Witness: I was, sir.

The Court: And took the oath?

The Witness: I did, sir.

By Mr. Goldschein:

- Q. Did you take those notes down in shorthand?
- A. I did.
- Q. Did you transcribe those notes?
- A. Not yet.
- Q. Did you take them down accurately?
- A. Yes, sir.
- Q. Can you read those notes back to us now?
- A. Yes, sir.
- Q. All right. Did you take down the questions asked and the answers given, the questions asked by me and the answers given by Mrs. Charles Iris Noble?
 - A. I did.

Mr. Goldschein: Can we determine, may it please the court, whether Mrs. Noble is in the courtroom at the present time?

The Court: Is Mrs. Noble in the courtroom?

Mrs. Noble: Yes. [57]

The Court: Let us see if each one is here.

Mr. Bissey? (Mr. Bissey stood.)

Will you answer present?

Mr. Bissey: Present.

The Court: Mr. Dobbs?

Mr. Dobbs: Present.

The Court: Mrs. Smith?

Mrs. Smith: Present.

The Court: Mrs. Sherman?

Mrs. Sherman: Present.

The Court: Mr. Bock?

Mr. Bock: Present.

The Court: Mr. Kasinowitz?

Mr. Kasinowitz: Present.

The Court: Mrs. Forest?

Mrs. Forest: Present.

The Court: Mr. Alexander?

Mr. Alexander: Present.

The Court: Mr. Steinberg?

Mr. Steinberg: Present.

The Court: Very well. Mrs. Noble is present.

By Mr. Goldschein:

Q. Mr. Drummond, will you please read the questions asked Mrs. Noble and the answers given by Mrs. Noble?

A. "Q. By Mr. Goldschein: What is your full [58] name, please, Madam?

"A. Margaret Iris Noble."

Mr. Margolis: May we ask the witness to speak a little louder?

By Mr. Goldschein:

Q. The witness, after being sworn, testified as follows—

Mr. Margolis: Who is testifying here?

The Witness: Margaret Iris Noble.

The Court: Was the witness sworn?

The Witness: Yes, sir; sworn to tell the truth.

The Court: Very well. Now start over again with the questions and answers.

Mr. Margolis: May we ask the witness to speak a little louder?

The Witness: I will try.

"Q. What is your full name, please, Madam?

"A. Margaret Iris Noble.

"Q. Where do you live?

"A. Sherman Oaks, 15041 Sherman Oaks, Delgado Drive.

"Q. Mrs. Noble, just so that you understand your

position here, let me state this, that the grand jury is not investigating you. You are merely subpoensed here as a witness to give what evidence [59] you know. Do you understand that?

- "A. Yes, I understand.
- "Q. Now, in connection with that, let me ask you: Do you know the names of the county officers of the Los Angeles County Communist Party?
- "A. I refuse to answer that on the ground that it may incriminate myself.
- "Q. Do you know what the word incriminate means?
 - "A. I think so.
 - "Q. What?
 - "A. I think so.
- "Q. You are saying in substance that the answer you would give will tend to involve you in the commission of a Federal crime. You haven't committed any crime, have you?
- "A. I don't know. I would have to talk this over with my lawyer. But I am sure that I understand the word incriminate.
- "Q. All right. Do you know the table of organization of the Los Angeles County Communist Party?
- "A. I refuse to answer that question on the ground that it might incriminate myself.
 - "Q. What is your occupation? What do you do?
 - "A. I am a housewife.
 - "Q. What is your husband's first name? [60]
 - "A. Charles.
 - "Q. Charles Noble. What is his occupation?
- "A. I refuse to answer that on the ground that that may incriminate myself.

- "Q. You really don't mean that, do you?
- "A. He is a writer.
- "Q. Where is he employed?
- "A. Free lance writer.
- "Q. Do you know Mr. Ned Sparks?
- "A. I refuse to answer that on the ground that it may incriminate myself.
 - "Q. Do you know Mr. Vincent Russo?
- "A. I refuse to answer that on the ground that it might incriminate me.

"Mr. Goldschein: All right. You are not excused, but we will recess you. Will you wait in the adjoining room, please?"

Mr. Goldschein: Now, may it please the court, we insist that there is nothing in any of those questions that could possibly tend to incriminate the witness for any crime against the United States Government. We ask respectfully that the witness be given an opportunity to explain to the court, either from the witness stand or privately outside of the hearing of government counsel, so that she may advise the court and the court be in a position to determine whether or [61] not the answers to the questions would tend, or may tend, to incriminate the witness for the violation of a Federal offense.

Now the court heard the witness asked whether or not she knows the names of two individuals, and she claimed the privilege against self-incrimination with reference to answering the question on either one.

The Court: And two other questions.

Mr. Goldschein: The last two questions, does she know Ned Sparks, does she know Mr. Vincent Russo, and the court heard Mr. Vincent Russo introduced

here this morning as a special assistant to the Attorney General, showing, may it please the court, how ridiculous is the answer of the witness and how each of them, the court will note, makes the same answer to those particular questions, which tends to prove that the intent of these witnesses is the intent to answer them in the manner that they have and is by concerted agreement.

The Court: The question is whether or not it is contumacious and that turns upon whether or not the answer which they might give might tend to incriminate them, as disclosed by the question, or if they desire to give the court information aside from that contained in the question as may be disclosed by the information they may give to the court.

Now, is it your desire to proceed by putting on the testimony given by each of the witnesses? [62]

Mr. Goldschein: Yes, your Honor.

The Court: And then, Mr. Margolis, do you wish to be heard concerning each of them as they arise or all of them at the conclusion?

Mr. Goldschein: I think, may it please the court, that it could be handled much more orderly if each witness were handled individually so each may be given the opportunity to explain or refuse to explain.

The Court: Very well.

Mr. Margolis: Does your Honor care to hear from us on that subject?

The Court: Just a moment. Mrs. Noble, will you come forward, please.

Mr. Margolis: Your Honor please—

The Court: Just a moment. Come on inside the rail.

Is Mr. Margolis your attorney in this proceeding? Mrs. Noble: Yes.

The Court: Very well, Mr. Margolis.

Mr. Margolis: I think that all of these can be handled most expeditiously together, because the grounds are all of a similar character, as your Honor undoubtedly can guess from the fact that it was a single investigation and all these people were subpoenaed together.

We think that it can best be handled together because our reasons are the same in each of the cases, and we want at [63] this time to renew our motion for a continuance. I can tell your Honor at this time the substance of what I know about the substance of the indictment which was obtained in New York City, about which—

The Court: Let me see. There are four questions here: Do you know the officers of the Communist Party in Los Angeles—was that the first question?

The Witness: The Los Angeles County Communist Party.

The Court: Do you know the table of organization, do you know Ned Sparks, do you know Vincent Russo. Those are the four questions?

Mr. Margolis: That is right.

The Court: Very well. Now your motion is to continue it in order that you may get a copy of the indictment against William Z. Foster and others?

Mr. Margolis: That is right, your Honor. I may tell you what our theory is.

The indictment in that case was directed against

Foster and others because of their membership and activities as members and officers of the Communist Party, including such things as attending a convention, including, if your Honor please, the distribution of literature, including the things such as attending committee meetings, such as setting up separate sections of the Communist Party in various parts of the country. [64]

It is our contention, and we are prepared primarily at least to cite authorities to support us, although we want more time to thoroughly prepare and present to your Honor the authorities, it is our position that anything which tends to connect an individual with the Communist Party, in view of this indictment, is something which the witness need not answer upon the grounds that it might incriminate him.

I refer particularly to the case with which your Honor may be familiar—

The Court: How can the answer to the question, do you know the officers of the Communist Party of Los Angeles County, connect the witness with the Communist Party, or do you know the table of organization?

Mr. Margolis: Because that can be a link, if the court please.

The Court: That can be a what?

Mr. Margolis: That can be a link in a chain of evidence tying a person up into either affiliation with, activity with, or membership with the Communist Party.

The case of Counselman v. Hitchcock, which I think is 142 U.S. 547, which is the leading case on this point, supports the proposition that this privilege

against self-incrimination extends to refusal to answer any question which tends to establish any element of an offense or to furnish evidentiary leads from which evidence tending toward guilt may be obtained. [65] I would be glad to read portions of the case to your Honor, but as I understand it now we are concerned primarily with the question of the continuance rather than a thorough argument on the law.

The Court: Yes.

Mr. Margolis: If there is a possibility, as we intend to show by these indictments, that persons may be incriminated by virtue of membership in the Communist Party, then if a—

The Court: What about the Schneiderman case? Mr. Margolis: Just a moment, your Honor. I will answer the Schneiderman case later.

The Court: In that case, by virtue of membership in the Communist Party the court pointed out that it was a matter of individual action and not a membership in an organization such as the Communist Party was supposed by then to be at the time.

Mr. Margolis: I will come to that in a moment. My point is that if it might be incriminating to be a member of or affiliated with or active on behalf of the Communist Party, and anything which even gives an evidentiary lead to that question, is something which need not be answered and against which the privilege may be claimed.

The Court: What statute are they accused of violating in the Foster case? [66]

Mr. Margolis: In the Foster case they are accused

of violating Section 2 of the Act of June 28, 1940, commonly known as the Smith Act.

The Court: What does that require?

Mr. Margolis: It is Section 10, Title 18 of the United States Code. It may be a different section in the new edition, your Honor.

The Court: When was the indictment brought, before September 1st? (Examining citation.)

Very well.

Mr. Margolis: Now, I am informed something that I didn't know about, that in addition to the indictment that I have referred to, which exists in New York, there are 12 individual indictments which are based solely upon membership in the Communist Party. I would say that these questions—I will come to the Russo question in a moment—that these questions might tend to furnish evidentiary leads and, if so, the privilege might be claimed.

Now as far as the Schneiderman case is concerned, the government is not in a position to claim the benefit of the Schneiderman case. We think the Schneiderman case is a correct decision, that it ought to be the law of the land today, but the government is not recognizing the Schneiderman case as the law of the land today. It is indicting people despite the Schneiderman case, and under the case of Counselman v. Hitchcock, [67] an individual has the right to claim the privilege against self-incrimination if there is a possibility of his being indicted as a result of either his testimony, evidentiary leads obtained by his testimony, or where his testimony constitutes the slightest bit of evidence which can be used as part of the basis of obtaining an indictment against him.

And it doesn't make any difference whether the indictment is good or is bad, if there is a possibility of an indictment being taken against him, then the very question that the person may be deprived of his liberty temporarily, may have to put up bond, may be forced to defend himself, is sufficient to entitle him to claim the privilege against self-incrimination.

If today it were true that the government of the United States, through the United States Attorney General's office, the very office which is acting here, had consistently taken the position that the Schneiderman case prevented the issuance of such an indictment, then we would have an entirely different question here, one in the nature of the one your Honor presents, but the situation, and what we want to prove, we don't have the certified copies of the indictment here, we couldn't have had them here by this time, but what we want to prove is that the government has not taken this position and if these people testify in response to these questions there is a danger that they may be furnishing evidentiary leads, [68] there is a danger that they might be furnishing particles of evidence which might tend to incriminate them under that theory. That is our position.

Now on the question of Vincent Russo, if each of these defendants had been asked—

The Court: You are arguing the merits now or to your continuance?

Mr. Margolis: Except that your Honor might be able to dispose of the Vincent Russo matter.

If the witnesses had been asked, do you know Mr. want to consider granting a continuance, we might

Vincent Russo who is sitting here, and he had been pointed to and identified, that might be a different question, and they might be ordered to answer that question, but they weren't asked that. No evidence has been presented that this Mr. Vincent Russo is the only Vincent Russo who exists, that there isn't another Vincent Russo in the United States, that there isn't another Vincent Russo in Los Angeles, or knowing him or any connection with him might not be an evidentiary lead. It is precisely the sort of thing that the government could utilize in obtaining an indictment similar to the one obtained in the case of United States v. Foster and Dennis. The name of the case is United States v. Foster, of course.

I do not want to have this argument considered as a complete argument on the merits. I am merely making this as an [69] argument on my motion for a continuance and ask for a ruling on that at this time.

The Court: Very well.

Do you wish to be heard further, Mr. Goldschein, in connection with the motion for a continuance?

Mr. Goldschein: We are objecting to the motion for a continuance and for reasons I would like to state as follows:

There isn't any basis of course for the statement of Mr. Margolis, to get up here and simply state that the government is making a crusade against anyone. That is ridiculous.

It is also ridiculous to say that the questions asked the witness here is the beginning of a chain that may lead to something that may tend to incriminate him, any more than asking the witness what his name is. There isn't anything more to the question asked, does he know the names of the officers of the Los Angeles County Communist Party—

The Court: You are arguing the merits now. Counsel has argued again that the matter ought to be continued in order that he may be able to produce before this court a certified copy of the indictment brought someplace in the East, United States v. Foster, because that will reveal that somebody was indicted because they knew something about the Communist Party, and so on.

What you to say as to that?

Mr. Goldschein: I was just leading up to that. I am [70] coming to the proposition of what would tend to incriminate the witness.

Now Mr. Margolis informs us here that these witnesses before the grand jury are Communists, by inference, that the Attorney General is after these people, and the inference is that they must be Communists.

Mr. Margolis: There is no such inference. Maybe counsel wants to infer that.

The Court: What is the difference?

Mr. Margolis: I don't think counsel should be allowed to talk to the press this way.

The Court: I do not see how I have been able to prevent either counsel from doing so.

Mr. Goldschein: May it please the court, the New York indictments, as I understand them, are based on the Smith Act which prohibits advocating the overthrow of the government by force and violence, or counseling or encouraging any organization that advocates the overthrow of the government by force.

Today there is no statute that makes it a violation of the law to be a member of the Communist Party. Now the Schneiderman case and the Barsky case both stand for that principle.

It might be interesting to note that five witnesses in Denver were held for contempt for refusing to answer questions more direct in connection with their Communist activities. [71] One refused to answer whether or not she was a member of the Communist Party. Others refused to answer, after making the statement that they were members of the Communist Party, questions relating to other people that they knew.

More interesting than that is the fact that the Circuit Court of Appeals denied bail last Thursday on the matter that there was no substantial question of law involved from the bench.

Now these witnesses haven't come to the point as to whether or not they are members of the Communist Party or whether they have taken any active part in the Communist Party, and nobody has been asked the question as to whether or not they advocate the overthrow of the government by force. The grand jury hasn't touched on that question.

The New York indictment has absolutely nothing to do with this question at bar.

The Court: I am satisfied that it does not, counsel. The motion for a continuance is denied.

Mr. McTernan: Would you hear from us a moment longer on this question, because I think there is a serious matter raised by Mr. Goldschein's argument.

The Court: It is solely on the question of whether or not the Foster indictment is material here.

Mr. McTernan: I don't think that is the only question.

The Court: That is the question. [72]

Mr. McTernan: If we could have time to submit proof to your Honor in support of the position which the witnesses have taken before the Grand Jury, part of our proof consists of the New York indictment.

The Court: Assuming that the indictment is, as you say, that it is for a violation of this Section 10 of Title 18 of the United States Code, I cannot see how it could possibly affect the right of the witness to refuse to answer the question on the ground that she might be incriminated, any one of the four questions that are here. Now this is the point that is involved here, and the question of the continuance.

Mr. McTernan: Your Honor, I don't want to be disrespectful, but I think the matter has been presented to you by the Special Assistant to the Attorney General in the wrong way. The question is not—

The Court: You mean in a convincing way?

Mr. McTernan: In the wrong way, your Honor. Counsel has not called your attention to the law which governs this matter.

The Court: Very well. What is it?

Mr. McTernan: The law which governs this matter is the provision in Title 18, Section 10, which

makes it a crime to be a member of an organization that advocates the overthrow of the government by force and violence. His office, which has brought indictments in controvention to the Schneiderman [73] case, which claims that membership alone in that organization is membership in an organization which violates Section 10. In other words, membership and membership alone in the Communist Party, according to the Attorney General of this country, constitutes membership in an organization which advocates the overthrow of the government by force and violence.

What this witness is claiming is a privilege against a question which might tie her in with the Communist Party because, as we will prove to your Honor if we are given the opportunity through this continuance, simply membership alone was enough to indict 12 individuals in New York City, not on a joint indictment of conspiracy, but on individual indictments, your Honor, which charged that these people were members of such an organization, to wit, the Communist Party.

In other words, it is said in the indictment that they are members of an organization which advocates the overthrow of the government by force and violence, to wit, the Communist Party, knowing it to be such.

Now we submit to you that any question which elicits from a witness her knowledge, her personal knowledge, your Honor, she is not being asked to testify to hearsay, to her personal knowledge as to who the county officers are, to her personal knowl-

edge of an organizational chart, is a question which will tie her in with the Communist Party and subject her to a reasonable risk of prosecution, which is what the [74] Court says is the test under such case as Counselman v. Hitchcock and United States v. Weisman.

We are asking simply for an opportunity to make this record complete. We don't see how your Honor can adequately decide this question, and it means a decision which affects the liberty of this individual, without having a complete record.

For example, in the Weisman case, which is cited in 111 F. (2d) 260, there perfectly innocent questions were asked the witness and he was allowed to show the existence of an indictment against other people, a plan on the part of the United States Attorney's office to bring indictments against other people which could include him. With that proof in the Court, the opinion being written by Justice Learned Hand—

The Court: What about the Barsky case, where the Supreme Court sustained the contempt conviction for refusal to answer the direct question whether or not they were a member of the Communist Part or believed in Communism?

Mr. McTernan: The Barsky case specifically points out that the privilege against self-incrimination is not involved. They were discussing simply the power of a legislative committee to ask such a question, the privilege against self-incrimination not having been claimed at the time the questions were put—as a matter of fact, questions were not put—and the question of self-incrimination not having

been [75] raised before the Court. The Barsky case has nothing to do with what is before your Honor. All we are asking is a chance to make a record on which the liberty of this individual will be determined.

We submit to you that we will have a record, if you will give us enough time, which will be virtually identical with the record in which Judge Learned Hand in the Weisman case held entitled the witness to claim his privilege.

The Court: The motion for a continuance is denied.

Mr. Margolis: Are we proceeding with one case at a time?

The Court: Yes.

Does the witness at this time wish to make a statement to the Court out of the presence of the Grand Jury and out of the presence of the United States Attorney's office in explanation of her refusal?

Mr. Margolis: We are prepared to make whatever showing we have here in open court, your Honor.

The Court: You are answering for the witness, that she does not?

Mr. Margolis: That is right.

The Court: Is that correct?

Mrs. Noble: That is correct.

Mr. Margolis: Your Honor, I want to make an offer of proof at this point. I have here one of the indictments and [76] I want to offer to prove that sometime during the year 1948—I do not have the

exact date but it was within the past several months—in the District Court of the United States, for the Southern District of New York, there was returned an indictment in Case No. C-128-87, entitled United States of America v. William Z. Foster, Eugene Dennis, also known as Francis X. Waldron, Jr., John B. Williamson, Jacob Stachel, Robert G. Thompson, Benjamin J. Davis, Jr., Henry Winston, John Gates, also known as Israel Regenstrief, Irving Potash, Gilbert Green, Carl Winter, and Gus Hall, also known as Arno Gust Halberg, reading either as follows or substantially as follows—I offer to prove that it reads as follows:

"The Grand Jury charges:

"1. That from on or about April 1, 1945, and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York, and elsewhere—"

Mr. Goldschein: I have a copy of that indict-

ment, if it will save time.

The Court: Let counsel look at it and, if agreeable, you may pass it up to me.

(The document referred to was exhibited to counsel.)

Mr. Margolis: Could we have a stipulation that this is a true and correct copy of an indictment—do you know what date it was issued in New York? Within the past several [77] months?

Mr. Goldschein: Yes.

Mr. Margolis: And now pending?

Mr. Goldschein: Yes, if you wish.

Mr. Margolis: I understand there is such a stip-

ulation. I ask that this document be marked defendant's exhibit—

The Clerk: A.

Mr. Margolis: A, and offer it in evidence, your Honor.

(The document referred to was passed to the Court.)

The Court: Very well. I have read it.

Mr. Margolis: We also offer to prove, your Honor please, that—is that admitted in evidence?

The Court: Admitted.

(The document referred to was received in evidence and marked Respondent's Exhibit Λ .)

[Printer's Note: Respondent's Exhibit A is identical to Defendant's Exhibit A, set out in full at page 327, Vol. II., of this printed record.]

Mr. Margolis: We also offer to prove that there is now pending in the same Court 12 individual cases entitled United States of America v. William Z. Foster, United States of America v. Eugene Dennis, and so forth and so on, in which 12 cases each of the defendants named in Defendant's Exhibit A are individually charged solely with membership in the Communist Party, an organization it is alleged that teaches and advocates the overthrow and destruction of the United States by force and violence [78].

We have asked counsel if he has copies of those

indictments here and he says he does not have. We submit this as an offer of proof, not because of our inability to prove this if a continuance were granted for that purpose, but simply because we do not have it here and it would take perhaps two or three days by wiring tonight to get back certified copies of those indictments—maybe four days. That is the reason for offering to prove that.

We also offer to prove that with respect to all of these indictments, in other words, the indictment, Defendant's Exhibit A and these others which we have mentioned, a motion or motions to dismiss them were denied in the United States District Court within the last several days.

Will counsel be willing to stipulate to that?

Mr. Goldschein: No, sir.

Mr. Margolis: Apparently counsel thinks this is more serious than he has indicated or he would be willing to stipulate. That is a fact. It has appeared in all of the papers, and we would like an opportunity to get a certified copy of the order denying the motions to dismiss or the orders denying the motions to dismiss in each of these cases.

We make it as an offer of proof solely because we are denied the opportunity to obtain them.

We also would like to offer to prove that these cases, all of them referred to, are now set for trial, or at least [79] up until a day or two ago were set for trial, for November 1st or 2nd, 1948, and are presently pending in the status that I have indicated in the United States District Court.

If we were allowed time to obtain a continuance

we would prove, and we hereby offer to prove, the following—

The Court: The motion for a continuance has been denied. We are talking about the merits of it now.

Mr. Margolis: I understand that, but I want the record to be clear, that the reason that this is an offer of proof and is not—we are not presenting evidence—is not because of any inherent inability on our part to present this evidence, but simply because we cannot have it here at this moment in view of the fact that the defendants in this case were served at 7:00 a.m. this morning and since then, as your Honor knows, we have been pretty well occupied. That is my only reason for continuously referring to the denial of the continuance.

We offer to prove through the testimony of the Attorney General, through newspaper reports, through other witnesses, that the Attorney General of the United States has announced that it is his plan and intention to obtain a series of indictments throughout the United States of America, including specifically the City of Los Angeles, charging persons with violation of Section 2 of the Act of June 28, 1940, commonly known as the Smith Act, and that said indictments will be based [80] solely upon the proposition that the individuals are members of or alleged to be members of the Communist Party.

Your Honor please, we now have—Mr. Gold-schein told us orginally he didn't have it but apparently found it in his files—a copy of one of the

original indictments, of one of the indictments of which I said there were 12 against different individuals.

Mr. Goldschein: This is a copy.

Mr. Margolis: This is a copy, and I understand that he is willing to stipulate that this is a true and correct copy, and that there are 11 other indictments similar to this, except for the name of the persons involved.

Is that correct?

Mr. Goldschein: That is correct.

Mr. Margolis: Mr. Goldschein has indicated that he will so stipulate, and may the record so show.

I offer this document as Defendant's Exhibit B. The Court: It will be received in evidence.

(The document referred to was received in evidence and marked Respondent's Exhibit B.)

[Printer's Note: Respondent's Exhibit B is identical to Defendant's Exhibit B set out in full at page 331, Vol. II., of this printed record.]

Mr. Margolis: May it be deemed that my offer of proof as to the Attorney General's statement of intention and intended action, which refer to 12 indictments concerning which I made an offer of proof, are intended now to refer to Defendant's Exhibits A and B? In other words, I made an offer of [81] proof which I referred to before Defendant's Exhibit B was in evidence. So shall I repeat it in order to keep the record straight?

The Court: You mean your offer is to prove by

the Attorney General's testimony that he said he was going to go about the country, including specifically Los Angeles, and indict people on indictments similar to your Exhibit B?

Mr. Margolis: A and B.

The Court: A and B, for being members of the Communist Party?

Mr. Margolis: That is right. That he has so announced and that it is his contention so to do.

We also offer to prove in this connection that the Attorney General has found under the loyalty check order—I don't know the exact designation of the order—Executive Order 9835, that the Communist Party is an organization which advocates the overthrow of the American form of government by force and violence, that there is a specific administrative finding to that effect. Again we say, contrary to the Scheiderman case. There it is.

We also offer to prove that the Attorney General's office is proceeding throughout the United States to institute and carry into effect deportation proceedings against numerous individuals upon the theory that the Communist Party is an illegal organization, one which advocates the overthrow of the [82] government by force and violence, and that mere affiliation with the Communist Party is a sufficient basis for deportation.

We offer to prove that the Attorney General of the United States has made the statement on a number of occasions that it is the policy and position of his office that anyone who is a member of the Communist Party has violated this section of the Smith Act, and that this is the official policy of the Government of the United States, upon the basis of which it intends to act in the future and at least, and in addition, that this is the announced official policy upon the basis of which the Government of the United States intends to act in the future.

On that phase of it, your Honor, that completes our offer of proof, but at this time we would like to call as a witness the clerk of the jury commission to take testimony on another point. We haven't had a chance to subpoen him, but he is probably available.

The Court: That is on the point of the organization of the Grand Jury?

Mr. Margolis: That is right, your Honor.

The Court: Under my ruling this morning, and I still adhere to it, a witness cannot challenge the organization of the Grand Jury.

Mr. Margolis: Will I have an opportunity to make an offer [83] of proof on that point, your Honor?

The Court: Make your offer of proof.

Mr. Margolis: I offer to prove, your Honor please, that the Grand Jury in this particular case was selected from a panel which was in turn selected by the jury commissioner and the clerk of the court in a manner not calculated to achieve a representative cross-section of the community, in that among other things names for persons on that panel were obtained from golf clubs, society clubs social registers, and similar sources of individuals

in the higher economic brackets, and that names were not obtained from sources in the lower economic brackets in the same maner that they were from sources in the higher economic brackets.

We offer to show that in the selection of names from the telephone book, which was used as one manner of selection, one source of selection, certain areas of the community in which persons in the lower economic brackets lived, were consistently and repeatedly and constantly discriminated against, and that the selections were made overwhelmingly from the sections where persons in the higher economic brackets live.

We also offer to prove that the composition of this Grand Jury, of the panel from which it was selected, is such that there is absolutely no possibility, no reasonable possibility, that the Grand Jury was selected in a manner calculated to achieve a representative cross-section of the community, and [84] that the very results of the selection, by virtue of the fact that the composition of the Grand Jury and of the panel from which it was selected indicate the discrimination to which we referred.

Now I could give a more detailed offer of proof if necessary.

The Court: Do you have an affidavits to offer in support of your charge?

Mr. Margolis: I would like to have an opportunity to prepare them, your Honor. I just have had no opportunity to prepare such affidavits, and I hereby renew my motion for a continuance to prepare such affidavits.

The Court: The motion is denied. I will adhere to the ruling I made this morning in the Blair case, that the witness has no right or privilege to challenge the composition of the Grand Jury before whom he is called as a witness.

Does that conclude your presentation?

Mr. Margolis: No, your Honor, it does not.

As I understand your Honor's ruling, it is not based upon my failure to furnish affidavits, that your Honor does not deem that I have been negligent, or counsel for these defendants have been negligent, or would have had any possibility within the time—

The Court: My ruling is that the witness has no legal standing. [85]

Mr. Margolis: Well, your Honor asked for affidavits and I wondered.

The Court: No, I did not. I asked if you had any. I do not want anything. [85-A]

Mr. Margolis:

In connection with our other defenses, your Honor, we offer to prove that the grand jury is not conducting a bona fide investigation within the scope of its powers in that the investigation herein was instituted by the office of the Attorney-General of the United States.

The Court: That is a repetition of the ground which you urged before, is it not?

Mr. Margolis: That is right, but I urged them previously as a basis for a continuance. I want to now make my record entirely clear. Does your Honor wish me to refer to the grounds I urged before?

The Court: I think if you merely state them.

They are the same grounds? You are now offering them on the merits, is that correct?

Mr. Margolis: Yes. And we offer specifically to produce evidence to support these grounds, your Honor, if given an opportunity to do so.

The Court: Very well.

There will be the same ruling, to the effect that the witness has no legal standing to challenge the composition of institution of the grand jury on the grounds which are set forth in the written motion.

Mr. Margolis: I think that the record ought to be clear, your Honor, that these people who you are referring to as witnesses are now defendants before your Honor. [86]

The Court: They are respondents. They are not defendants.

Mr. Margolis: This is a proceeding of a criminal nature, as I understand it, and they have the same status as a defendant.

The Court: No, I do not know that it is a proceeding in the nature of a criminal proceeding.

Mr. Margolis: I would like, if we had time, to have an opportunity to present authorities to you on that point.

Now may I have some time to argue the law?

The Court: What have you been arguing?

Mr. Margolis: I have made a preliminary argument, your Honor. This is a matter of very vital importance.

The Court: I understand that it is a matter of vital importance.

Mr. Margolis: At the time that I presented the

any State, Territory, District or Possession thereof, or the government of any political subdivision therein, by force or violence, or by the assassination of any officer of any such government";

Is that a political party?

Mr. Margolis: I say this, I defend no political party, but what has happened——

The Court: I do not understand counsel. You said a moment ago that these people would incriminate themselves because they would show some connection by their answer with the Communist Party, and that they were indicted for being members of the Communist Party. The indictments show on their face that they are brought under this section which I have just read, and now you say it is a political party.

Mr. Margolis: That the Communist Party is a political party? The Schneiderman case has said so. I go along with the Supreme Court on that.

The Court: How could they be incriminated if they said they were a member of a political party?

Mr. Margolis: If the United States Attorney-General's office also went along with the Schneiderman case they would not be incriminated. But the United States Attorney-General's office has abandoned the Schneiderman case. That is precisely the point I am trying to make. [94]

The Court: If your position that any answer here which might be given to any of these questions would merely disclose that they were or were not a member of a political party, it seems to me that we need not waste any more time and the witness should answer the question.

If your position, however, is that the answer she may give may tend to incriminate her, that again is something else. You may proceed.

Mr. Margolis: Our position is simply this, your Honor, that the Attorney-General is prosecuting members of the Communist Party upon the theory of the Communist Party advocates this. We think that the Attorney-General's office is violating the Schneiderman case, but that makes no difference as far as the claim of privilege is concerned. If the Attorney-General's office is prosecuting people because of their membership in the Communist Party, or their claimed membership in the Communist Party, then there is a right to claim the privilege even though the Attorney-General's office is wrong. [95]

The Court: I do not read the Schneiderman case as you contend in connection with this matter. The Schneiderman case is authority for the proposition that guilt is personal regardless of any membership in any party.

Mr. Margolis: That is correct.

The Court: Or any organization.

Mr. Margolis: That is correct.

The Court: That mere membership in an organization does not itself create guilt, that it must be personal.

Mr. Margolis: That is right.

The Court: Therefore it seems to me that the Schneiderman case is authority for the position taken by the government here.

Mr. Margolis: If your Honor please, the Schnei-

derman case holds two things: the Schneiderman case holds, first of all, that there was no evidence presented sufficient to establish that the Communist Party advocated the overthrow of the government by force and violence and, second, as your Honor has stated, that guilt is personal. But the Attorney-General's office has abandoned that position and now takes the position—

The Court: They are not abandoning it, they are asserting here that insofar as this proceeding, so far, that it is a personal matter, that these questions do not incriminate [96] this woman here who is called as a witness, Mrs. Noble, because there is no personal connection showing a guilt.

Mr. Margolis: They may take that position here, but they take other positions elsewhere. Therefore, there is a danger of incrimination.

The Court: Let me ask you this: The question to the witness, the first question is, do you know the officers of the Los Angeles County Communist Party. If the witness answers "No," would she incriminate herself?

Mr. Margolis: No.

The Court: She would not?

Mr. Margolis: That is right.

The Court: If she answered "Yes" then she might incriminate herself?

Mr. Margolis: That is right.

The Court: Of what?

Mr. Margolis: That might be one item, either an evidentiary lead or one item in a chain of evidence

leading to prove membership with or affiliation with the Communist Party.

The Court: I cannot go along with you. Unless you have some other legal proposition to offer, I cannot hear you any further.

Mr. Margolis: I haven't finished the case.

The Court: What case? [97]

Mr. Margolis: I haven't finished the case of Counselman v. Hitchcock, but I also have the case of United States v. Weisman, which is reported in 111 F. (2d).

The Court: That is the case which you referred to a few moments ago?

Mr. Margolis: Yes. Mr. McTernan did, I didn't.

The Court: Very well.

Mr. Margolis: That is 111 F. (2d) 260.

Your Honor please, the question in that case was—I don't have the exact language of it, but it was something like this—did you visit Shanghai, or did you know anybody who visited Shanghai during a certain period of time. Now obviously, your Honor, nobody is incriminated by visiting Shanghai or by knowing somebody who visited Shanghai. There isn't the remotest possibility that the answer to that question standing along is a self-incriminating one. Yet in that case the witness refused to answer the question—I will wait until your Honor is finished reading.

The Court: Well, counsel, I cannot see how that case supports you. The doctrine in it is that the witness must show how it would incriminate him. In this case the witness offered to produce an indictment wherein certain specific events, the date and

time, about which questions were asked him. Now what have you to show here where this witness who was asked this question, if she answers this question, it [98] would cause her to be indicted or related or connected with any crime?

Mr. Margolis: I am going to let Mr. McTernan handle that. My voice is getting hoarse.

The Court: Of course we cannot go on in relays here forever, counsel. I desire everyone to have a full opportunity to be heard, but——

Mr. McTernan: Your Honor, please, this rush with which the Attorney-General has conducted these proceedings hasn't given us an opportunity adequately to prepare for this, and we have been forced to draw on whatever knowledge we have from the decisions. It happens that I am more familiar with the Weisman case than Mr. Margolis.

There were two questions there, your Honor. One was the matter of receiving cablegrams at Murray's Restaurant in New York, and the second one dealt with having visited or knowing anyone who visited in Shanghai during a certain period of time.

I would like to direct your Honor's attention to the second of those questions first because, as Judge Learned Hand points out, this question was the most innocent seeming on its face.

The Court: Yes, I know, but he said it directly pointed to the defendant and it would certainly have disturbed any but the most hardy, and so forth. In other words, the person [99] who is claiming the privilege offered to produce, and did produce, and the lower court refused to receive it but Judge Hand

held improperly so, documentary evidence showing that if they had answered that question it would have connected them with a crime.

Mr. McTernan: That is exactly what we have proven here, or offered to prove. That is why the Weisman case we think controls this situation.

What happened in the Weisman case was this, there had been an indictment against 30 other people, not Weisman but 30 other people. There had been a statement by the United States Attorney that he was thinking of bringing more indictments, and he described one of the prospective indictees in terms which came pretty close to Weisman.

Now what have we proven here? We have proven indictments of 12 people based upon their formation of the Communist Party. We have proven 12 individual indicements against the same individuals based upon their membership in the Communist Party as a violation of the Smith Act.

Now we also offer to prove that these very gentlemen who sit here, claiming that there is no possibility of incrimination involved in this question, or these questions put to this witness, have announced an intention of conducting grand jury investigations and bringing indictments of a similar tenor in other cities of the United States, including Los [100] Angeles.

Now whether the Attorney-General is controlled by the Schneiderman case or not, or whether he should be or not, the fact is that in the Attorney-General's opinion, and it is the administrative policy of the chief law enforcement agency of the United States, that membership in the Communist Party alone constitutes a crime under the Smith Act.

The Court: Is that what they charge here?

Mr. McTernan: Yes, your Honor. That is exactly what they charge there. If you will read particularly the short indictment again, I think it was in the name of Foster, you will see my point.

The Court: "* * well knowing during all said period * * * In other words, it is knowingly.

Mr. McTernan: Of course that is part of the element of the crime, knowing membership. But this might prove knowing membership, your Honor, because it tends to prove membership. As the court pointed out in the Weisman case, and as the court pointed out in all of these cases, the answer to the question must need not be an admission of a completed offense, or even an admission of an essential element of the crime, it need only be an admission of a link in the chain of evidence or a point indicating that here lies a crime and that this person is involved in it. That is all that is needed to claim the privilege under the Constitution of this [101] country.

Now let's take this from another angle, your Honor. These gentlemen have said to you that there is no statute making it a crime to be a member of the Communist Party, and of course that is true, but that has nothing to do with the case. There was no crime saying that Weisman couldn't deal with narcotics. There was no law or statute making Mr. Counselman a criminal because he shipped goods on a railroad. They defined a broad offense, such as the Smith Act defines. These people have taken the posi-

tion, the Attorney-General has taken the position, that membership in an organization alone constitutes an offense under that statute. Any evidence which shows, or tends to show, or tends to link a witness with that organization, raises a reasonable likelihood of criminal prosecution, as Justice Learned Hand said in the Weisman case, a reasonable danger, and that is all that we have to point out here to you in order to justify the claiming of the privilege in this case. [102]

* * * *

The Court: Very well. Do you wish to be heard further, Mr. Goldschein?

Mr. Goldschien: I just want to call the court's attention to a case the court may be interested in hearing about.

The Court: If it goes to the point I would.

Mr. Goldschein: It is exactly in point. It is the case of Mason v. United States, in 244 U. S. That follows Counselman v. Hitchcock.

The Court: And modifies it?

Mr. Goldschein: And modifies it. [103]

In this case, may it please the court, a witness under a statute in Alaska was asked before the grand jury, did you see any gambling in a certain place on a certain night, and the witness claimed his privilege against self-incrimination, and the question went up, and the court said that there was no statute in Alaska that made it a violation of the law to see gambling, and the witness was therefore in contempt for not answering the question, and it was affirmed by the Supreme Court of the United States.

In affirming it, may it please the court, they set out and quote the opinion of Chief Justice Marshall in the Aaron Burr case, and may I read that portion of it that I think pertinent to the case at hand that counsel did not read:

"During the trial of Aaron Burr, in re Willie, 25 Fed. Cas. No. 14,692e, page 38, 39, the witness was required to answer notwithstanding his refusal upon the ground that he might thereby incriminate himself. Chief Justice Marshall announced the applicable doctrine as follows: 'When two principles come in conflict with each other, the court must give them both a reasonable construction, so as to preserve them both to a reasonable extent. The principle which entitles the United States to the testimony of every citizen, and the principle by which every [104] citizen is privileged not to accuse himself, can neither of them be entirely disregarded. They are believed both to be preserved to a reasonable extent, and according to the true intention of the rule and of the exception to that rule, by observing that course which it is conceived courts have generally observed. It is this: When a question is propounded, it belongs to the court to consider and to decide whether any direct answer to it can implicate the witness. If this be decided in the negative, then he may answer it without violating the privilege which is secured to him by law. If a direct answer to it may incriminate himself, then he must be the sole judge what his answer would be.'

"The constitutional protection against self-incrimination is confined to real danger and does not ex-

tend to remote possibilities out of the ordinary course of law."

Now that is as clear a statement of the law today as we can find, and is exactly what this court said at the outset in offering to hear the witness so that the witness can advise this court on just how the answer to that question would tend to incriminate her for the violation of the federal offense and which they have refused to do.

The Court: Very well. [105]

I cannot see how any of the legal propositions put forward by Mr. Margolis and Mr. McTernan on behalf of the witness, in and of themselves, are sufficient to sustain their position that the answer would tend to incriminate her.

Insofar as the offer of proof is concerned, it does not seem to me that any of it would be material if it were proved. It is therefore rejected.

I understand that the witness has declined to make any statement to the court, or the judge of the court, out of the presense of either the grand jury or the United States Attorney or the Assistant Attorney-General in explanation of her position. That being the case, it appears to me that the matter is now in the posture for a ruling.

It is the holding of the court that the questions do not tend to incriminate the witness and that the questions do not require an answer which would tend to incriminate the witness. It is therefore the order of the court that the witness return forthwith to the grand jury room and answer the four questions—will you read them, please, again?

The Witness: Do you know the names of the county officers of the Los Angeles County Communist Party?

The Court: Will you stand up, please?

(Mrs. Noble stood as requested.)

The Court: Very well.

The Witness: Do you know the table of organization of [106] the Los Angeles County Communist Party?

Do you know Mr. Ned Sparks?

Do you know Mr. Vincent Russo?

The Court: Do you understand the order of the court?

Mrs. Noble: Yes, I understand.

The Court: Very well, that will be the order of the court.

Do you wish now to proceed to return to the grand jury room with this witness, or to hear the testimony on the other witnesses?

Mr. Goldschein: I think it would be well to complete all the other 10 witnesses, or nine witnesses, so that we can proceed with them all when the grand jury convenes.

The Court: I have two jury cases to try tomorrow morning at 10:00 o'clock.

Mr. Goldschein: May I suggest that the others shouldn't take any length of time because the questions are the same and the legal problems are the same and probably won't require very much more

legal argument. That is a thought that occurred to me. I, of course, offer that as a suggestion with reference to time.

The Court: What is your suggestion, that we proceed now or that the court have a recess in order to let the grand jury—I suppose that they want to telephone their homes and wives and husbands, and tell them they can or cannot [107] be home for dinner—and return here and complete the testimony this evening? I do not see how you can go ahead with it tomorrow morning. I have juries coming in to try cases and there are no other judges to try them.

Mr. Goldschein: May I suggest that the jury might be recessed until tomorrow while we continue this evening?

The Court: I think we can probably conclude this in maybe another hour or so because counsel, unless there is some other legal point that comes up, I do not suppose counsel will want to repeat all of the things that have been said, except to incorporate them.

Mr. Margolis: We really have not on any one point completed our argument. We did not have the opportunity to reply to that last case by Mr. Goldschein.

The Court: You had an opportunity to read it because in the Weisman case it is referred to.

Mr. Margolis: That is right, and sharply distinguished.

The Court: And I think counsel could just as

well have presented that case in their presentation.

The question now is, how do you wish to proceed in order to suit the convenience principally of the grand jury?

Mr. Goldschein: I just learned, may it please the court, that the grand jury is willing to stay as long as it is necessary tonight to conclude.

The Court: Now or to go out and return? [108]

Mr. Carter: They prefer to complete it this evening rather than come back tomorrow on this matter.

The Court: Do you want to recess now and come back, say, at 7:00 o'clock and proceed at that time?

Foreman Ahlswede: Your Honor, we as a group prefer to complete it this evening.

The Court: Why not consult among yourselves? Foreman Ahlswede: We have, and we would rather complete the investigation this afternoon rather than tomorrow, if possible.

The Court: The point is now, whether or not we should recess until 7:00 o'clock and return here at that time and begin, or continue.

Foreman Ahlswede: Yes, we would prefer to recess to 7:00 o'clock.

The Court: Very well. That will be the order of the court.

The grand jury will return, and all of the witnesses who are here and subpoenaed will return, to this court room at the hour of 7:00 o'clock.

(Whereupon, at 5:30 o'clock p.m., a recess was taken until 7:00 o'clock p.m. of the same date.) [109]

Los Angeles, California, October 25, 1948, 7:00 o'clock p.m.

The Court: Are we ready to proceed in connection with the matter which was adjourned?

Have you called the roll of the grand jury?

The Clerk: No, I haven't. I do not have the book with me.

The Court: Will you get it?
The Clerk: Yes, your Honor.

Mr. Margolis: Might I take up a matter while we are waiting?

The Court: No, I think we had better see who is here first.

The Clerk: I have it now, your Honor.

(Roll call of the grand jury by the Clerk.)

The Clerk: A quorum is present, your Honor.

The Court: Very well.

Are the witnesses here? Mr. Bissey?

Mr. Bissey: Present.

The Court: Mr. Dobbs?

Mr. Dobbs: Present.

The Court: Mrs. Smith?

Mrs. Smith: Present.

The Court: Mrs. Sherman?

Mrs. Sherman: Present. [112]

The Court: Mr. Bock?

Mr. Bock: Present.

The Court: Mr. Kasinowitz?

Mr. Kasinowitz: Present.

The Court: Mrs. Forest?

Mrs. Forest: Present.

The Court: Mr. Alexander?

Mr. Alexander: Present.

The Court: And Mr. Steinberg?

Mr. Steinberg: Present.

The Court: Very well. Mr. Margolis?

Mr. Margolis: Your Honor please, at this time I would ask leave to reopen the case on two minor matters.

I would like to say to your Honor in explanation why we are doing this. We had frankly been doing our research on some of these questions on the fly and we had a very quick dinner and looked at some cases and we feel, in order to complete the record, there are probably some minor matters that should be taken up. Ordinarily I concede that counsel should be better prepared and should have done the research in advance. I think, however, that this is an unusual situation from the standpoint of time.

The Court: What are your points?

Mr. Margolis: One matter, we would like to have the respondent herself testify before your Honor alone. That is, in [113] the absence of counsel for the prosecution.

The Court: And the grand jury?

Mr. Margolis: And the grand jury, that is right. We would like to present the witness to your Honor.

The second is that we would like to call probably Mr. Carter to establish that the question concerning whether or not the respondent knew this Mr. Sparks who was referred to was asked because the government believed that it has information, or had information.

mation, indicating that Mr. Sparks is a prominent official of the Communist Party.

The Court: The latter point is immaterial and beyond the purview of the court in reviewing a contempt matter. As to its materiality, under the Blair case, as indicated, it is a general inquisition, and under more recent cases the same power in the grand jury has been confirmed.

As to your first point, I understood that the witness heretofore had declined to make any statement to the court out of the presence of the grand jury and out of the presence of the prosecution, or the United States Attorney or Assistant Attorneys General, or attorneys for the government as they are referred to now in the new rules; and that she now wishes to make such a statement?

Mr. Margolis: Yes. This was upon our advice. We have been acting as her counsel and we advised her to that effect.

As I say, your Honor, we have since done some additional [114] research and are now convinced that that advice was not the best possible advice under the circumstances, and for that reason we ask leave to reopen the matter and advise her to the contrary, and she is willing to accept our advice. That is, we advised her to the contrary of what we advised her before.

The Court: You understand that that information will be presented to the court in the presence of the Clerk and the court reporter, but out of the presence of her own counsel?

Mr. Margolis: I didn't understand that. And not subject to cross-examination?

The Court: She may make any statement that she desires to me.

Mr. Margolis: And, as I understand it, there is no examination on that statement?

The Court: No examination.

Mr. Margolis: Yes, we desire to have that done, your Honor.

The Court: Very well.

Is there any objection to that on the part of the United States Attorney?

Mr. Goldschein: No, sir. If she will make her statement to the court and satisfy the court, the government is satisfied.

The Court: Is it your desire to make such a statement, [115] Mrs. Noble.

Mrs. Noble: It is, your Honor.

Mr. Margolis: Before we go on to that, your Honor, I wonder if it may be considered that we offered to prove before the case was closed the other matter which I referred to? It isn't the fact that the case was closed that is preventing us from establishing the other matter, but rather your Honor's ruling that it is immaterial.

The Court: Concerning the testimony that you expect to elicit from Mr. Carter?

Mr. Margolis: Yes.

The Court: Yes. It is immaterial.

If the witness desires to make such a statement to the court in the presence only of the court reporter and the Clerk and out of the presence of the attorneys for the government and her own counsel and the grand jury, I will recess to chambers with the reporter and the Clerk and the witness.

(Here followed statement by the witness Noble to the court in chambers, reported but not transcribed.)

The Court: Will it be necessary to again call the roll of the grand jury, or will counsel stipulate that the grand jury is present, the same members who were here before?

Mr. Margolis: So stipulated. Mr. Goldschein: So stipulated. The Court: Very well. [116]

The witness has made a statement to the judge in chambers and the court finds that the explanation given by the witness is not sufficient in law or in fact to excuse her from answering the questions, and the order will stand, that the witness is ordered and directed to answer the questions propounded by the attorney for the government in the presence of the grand jury and to the grand jury.

Mr. Goldschein: May we request of the court to determine at this time whether or not the witness will answer the questions before the grand jury in order to save the time of the court and the time of the grand jury? We have nine other cases tonight and it won't take but possibly a minute to find out whether or not the witness will obey the order of the court.

The Court: No, I think that that would probably

be improper in the procedure. The witness is ordered to answer the questions. The grand jury will resume, the questions may be propounded to the witness, and she may then have an opportunity, in the atmosphere of the grand jury and the time which may elapse between now and then, for her to give consideration as to whether or not she will or will not answer the questions. I will not put her under the compulsion at this moment of making the determination of whether she will or will not answer. She has the right to make that determination at the time she is asked the questions in the presence [117] of the grand jury.

You will proceed with your next matter.

Mr. Goldschein: The next case—

The Court: This is not a case.

Mr. Goldschein: I am sorry. The next matter is Mr. Wesley Bissey.

E. L. DRUMMOND

resumed the stand and testified further as follows:

Direct Examination (continued)

By Mr. Goldschein:

- Q. Mr. Drummond, the next witness in order is Wesley Bissey. A. Yes, sir.
- Q. Will you tell the court whether or not Mr. Wesley Bissey was sworn in the grand jury room?

A. He was sworn to tell the truth.

The Court: When?

The Witness: This afternoon. I haven't the time.

By Mr. Goldschein:

- Q. This is an examination of Mr. Bissey that took place this afternoon in the grand jury room, is it not?

 A. Yes, sir.
 - Q. And the witness was at that time sworn?
 - A. Yes, sir.
- Q. Now will you read the questions propounded to him [118] and the answers that he gave.
- A. "Q. By Mr. Goldschein: Your name is Wesley Alexander Bissey?
 - "A. Wesley Bissey.
 - "Q. Is the middle name Alexander?
 - "A. No, sir.
 - "Q. Are you ever known by that?
 - "A. No, sir.
 - "Q. Are you known by any other name?
 - "A. No, sir.
- "Q. That is the only name you ever have been known by? "A. Yes.
- "Q. Mr. Bissey, so that you will understand your position here before this grand jury, the grand jury is not investigating you. You are merely subpoenaed to act as a witness and give what evidence you may have. Do you understand? "A. Yes.
- "Q. Now in connection with that the grand jury wants to know whether or not you will give us—wants to know this: Do you know the names of the county officers of the Los Angeles County Communist Party?
- "A. I must refuse to answer this question, sir, on the ground that it may tend to incriminate me.

- "Q. Do you know what the word incriminate means, sir?
- "A. I would not attempt to give a legal definition of the word.
- "Q. Do you know that it means that if you answer that question it may involve you in a Federal crime? That is what you are saying. Do you understand that? Do you understand what I mean?
 - "A. I think I understand what you mean.
- "Q. To elaborate, when you say you refuse to answer on the ground that the answer may incriminate you, you say in substance that to answer my question may involve you in the commission of a crime against the United States government. Now, you haven't committed any crime against the United States government, have you?
- "A. I would have to consult with my attorney before I could answer that.
- "Q. You mean you would have to consult with your attorney to determine whether or not you have committed a crime against the United States government?
- "A. As far as I know I have committed no crime against the United States government. [120]
- "Q. Then why do you hesitate to answer my question?
- "A. On the ground that my answer may incriminate me.
- "Q. Do you know the table of organization of the Los Angeles County Communist Party?
- "A. I must refuse to answer this question, sir, on the same grounds.

- "Q. What is your occupation, sir?
- "A. A steamfitter.
- "Q. Where are you employed?
- "A. I am not employed right now.
- "Q. Do you know Mr. Ned Sparks?
- "A. I refuse to answer this question on the ground that it may incriminate me also.
 - "Q. Do you know Mr. Vincent Russo?
- "A. I refuse to answer this question, for the same reason.
- "Mr. Goldschein: All right, sir. You are excused. Will you wait in that same room that you were in a few minutes ago?

"The witness: I will, sir."

Mr. Goldschein: Now, may it please your Honor, we insist that the witness has no legitimate claim against self-incrimination. We ask the court to hear the witness as it did [121] the witness before to determine whether or not there is any danger, present danger, of the witness becoming involved in a Federal crime, whether his answers would tend to incriminate him.

The Court: Mr. Margolis, I take it you wish to make the same record in connection with this matter as you did in the other?

Mr. Margolis: Yes, I wish to make the same record.

I wish, however, in this case to include as part of that record the matters which were included after the recess and reopened as being part of the original record.

The Court: In order to save repetition—let us

see—your first request is for a motion for a continuance?

Mr. Margolis: That is right, your Honor.

The Court: On all of the grounds which you have heretofore urged. Any additional grounds on the continuance?

Mr. Margolis: Those that have been stated.

The Court: Very well. That is denied.

Your second position is that on the merits the witness is justified in refusing to answer the question on the ground that it might incriminate him?

Mr. Margolis: Yes. I have made certain offers of proof in connection with that, and I offered certain exhibits, and I would like to have those included.

The Court: The same exhibits will be introduced here. [122]

Mr. Margolis: And they will be considered as part of the record in this case?

The Court: And the same offers of proof will be deemed to have been made and stated as before.

Mr. Margolis: The exhibits together with the stipulations that counsel made with respect to the exhibits?

The Court: It will be so ordered, as if they had been now repeated. And in addition to the grounds which you theretofore urged you now wish to urge an additional ground on the merits?

Mr. Margolis: I wish that all of my offers of proof that remain in the other case be deemed to have been made in this case.

The Court: Pardon me. Does the witness wish to make a statement to the court?

Mr. Margolis: Yes, your Honor.

The Court: Very well. Does he wish to make that now or after you have made your statement?

Mr. Margolis: I would like first of all to have an opportunity to supplement the argument. I want to rely upon the argument that was made in the Noble case but in addition to supplement that argument in this case.

The Court: It may be deemed that all of the matters and things which you urged in opposition to the motion of the attorneys for the government in the Noble matter will have been [123] made and stated by you in this matter with the same force and effect as if here repeated.

Mr. Margolis: All right.

The Court: You will therefore confine your statement to any supplemental matter. [124]

* * * *

Mr. Margolis: * * * *

In other words, unless it appears crystal clear to this court in the light of the circumstances shown, when there were no showing of circumstances in the Mason case, but in the light of the circumstances shown here, that the answer can be given with entire impunity, then there is a complete right to claim the Fifth Amendment.

And then what does the court do?

The Court: No answer of any witness in any inquiry can be given with entire impunity. Suppose they got somebody before a grand jury and said, "What is your name?" Well, they could refuse to answer that.

"Are you a citizen of the United States?" They could refuse to answer that because some day sometime there may be some immigration proceeding pending, or deportation proceeding pending against him, or some selective service matter, or some forgery of some government check or something else.

Mr. Margolis: Your Honor of course is right. You have to show some possibility. [127]

The Court: Counsel, I still do not know what crime they [129] could show they have committed if they would answer these questions.

Mr. Margolis: The point is, your Honor, that it might be a link in the crime which the government says it is, to knowingly belong to the Communist Party. It might be a link in establishing that. The thing that was lacking in the Mason case was that nobody showed, or attempted to show, that the government claimed that that was an illegal card game. For all that appeared, from all of the evidence, the possibility that anyone would ever claim that that was an illegal card game was simply somebody's speculation.

Now, as your Honor says, where it is mere speculation then the defendant cannot rely upon it. But we are not relying on speculation. We say that this is a possible chain in the link of evidence which the government itself has said is a basis for an indictment, and if it is a basis for an indictment, whether or not there could be a valid conviction, whether or not the conviction will eventually be sustained by the Supreme Court, is immaterial. We would argue

that it could not be. But the very fact that there is a possibility of indictment is sufficient reason for the right to claim the privilege. [130]

Then we have the case of United States v. Zwillman, which is a Second Circuit case, again decided after both these cases, decided January 15, 1940, in 108 F. (2d) 802.

In that case, here is what they say—incidentally, in that case certiorari was denied by the Supreme Court at 310 U. S. 636.

I suggest that your Honor start to read near the top of page 803 and read that page and the next one.

(The volume referred to was passed to the court.)

The Court: In this case the court points out:

"In the course of argument at the time of the presentment defendant's counsel stated that his client had been in the liquor business up to 1933 when the 18th Amendment was repealed. In view of that statement and the apparent assumption of all concerned, proof of who were defendant's associates in business might tend to establish a conspiracy to violate the revenue laws by failing to pay taxes, to affix stamps or to make returns under the applicable statutes."

Then they go on to state generally that that was practically a showing that the defendant had committed an offense, and therefore his refusal to indicate who his associates were in business, that is to say, in the liquor business, during the period when it was unlawful, might tend to incriminate him, and particularly in view of the court pointing out that

there was a previous witness in a trial which had linked him with an illegal situation.

I do not see any analogy between that situation and what we have here.

Mr. Margolis: Just a comment on that, and I have one more case and then I will be finished.

Certainly it would be a novel contention that in order to claim the privilege against self-incrimination one would have to come into court and prove that he was guilty of the crime. [132]

The Court: In this case there was no showing at all on the part of the United States Attorney, or the attorney for the government, as they are now called, that it was not the purpose of the inquisition of the grand jury to seek a prosecution against the witness. In this particular case that has been specifically disclaimed.

Mr. Margolis: But we have made a showing—

The Court: So that I doubt if any prosecution against any of these witnesses who are appearing before the grand jury at this time, based upon their testimony, but what they would not have immunity. It seems to me it almost amounts to immunity on the part of the government.

Mr. Margolis: I don't believe the United States Attorney and the statute can grant immunity.

The Court: You do not? They certainly have, and it has been held many times.

Mr. Margolis: I understand that that has to be approved by the court.

The Court: Immunity is an act which may occur without anybody consciously doing it. And here the attorney for the government has specifically stated to the witness that this is not for the purpose of prosecuting you in connection with any crime whatsoever.

Mr. Margolis: But they have not said that this evidence will not be used against you for any purpose whatsoever, and [133] we have shown, your Honor, that the Attorney General contemplates instituting other proceedings in which evidence like this would be material. The mere fact that the guarantee doesn't—

The Court: I am not holding that it is immunity. Maybe I will have to pass on that later on. But it seems to me as though the United States Attorney would certainly be precluded from bringing any prosecution against the witness for their statement which they might make in connection with such an investigation and interrogation.

Mr. Margolis: The very fact that your Honor indicates doubt indicates that the witness, if he believes he might be incriminated, is not in the position where he can safely answer.

The Court: The reason that I indicate doubt is the judicial forehandedness which might require me to rule upon the argument which some lawyer might convince me otherwise on some day.

Mr. Margolis: Yes, your Honor, and the witness has to worry about your Honor being convinced otherwise, too. It is the witness who is being placed in jeopardy and it is the witness who has an even greater privilege in that regard.

While on that point, your Honor, on that case, certainly the defendant, as a condition of claiming

his privilege, isn't required to come in and say, "Look, I am guilty of this offense," [134] or "I think I am guilty," or even give evidence indicating that he thinks he is guilty, in order to establish the immunity.

The Court: No, but the respondent has to show that there is some likelihood of him incriminating himself.

Mr. Margolis: That is right. And that is precisely why we fall within that case.

The Court: In the Weisman case they came in and showed the indictment and the connection and the possibility that the answer might connect him with some other criminal case.

Very well. Let us proceed with your next point, counsel.

Mr. Margolis: I have one more case, your Honor. The Court: All right.

Mr. Margolis: That is the case of United States v. Cusson, 132 F. (2d) 413, another Second Circuit Court case, and there the court said: [135]

* * * *

I say here, whether you know somebody who was a member of the Communist Party, or whether you know the Communist Party organization chart, that that is a warm enough scent in view of the position of the government that membership in the Communist Party is a crime under the Smith Act, that that is a warm enough scent so that a person, just like this person here, doesn't say whether she knew the Groveses, whether she had talked to them, so here a

person doesn't have to say whether he knows anything about the Communist Party.

The Court: I do not know if the Smith Act says it is a crime to be a member of the Communist Party; it says it is a crime to advocate the overthrow of the government of the United States by force and violence.

Does it say that it is a crime to be a member of the Communist Party?

Mr. Margolis: No, it doesn't, but the point is here that the government has taken that position.

The Court: Let me see, Mr. Margolis. You have offered in evidence and there is in evidence in connection with this immediate matter the indictment in New York against Foster and the indictment against the other man and the stipulation that there were 10 or 12, whatever there were, identical indictments against the other named defendants in the one indictment in which Foster is the principal defendant.

In this case it states:

"At the time of her visit (that is to Philadelphia), two men named Groves were under indictment in the Southern District of New York; the nature of the charge does not appear. Their trial took place a little while afterwards; she went to Mexico before it began, stayed there while it was on, and came back shortly after its conclusion. Her excuse for refusing to say whether she met and talked with 'the Groveses' was that it might serve as a link in establishing that they had told her to go to Mexico so as to avoid being

called as a witness upon their trial and that this would tend to prove that she had conspired with them to obstruct justice."

Where is the analogy between this witness and the indictment against Foster? Is there anything in this record which you are offering or have offered which will tend to show that this witness has talked with William Z. Foster, or is part of the same crime which is charged against William Z. Foster and the others, or any of them?

Mr. Margolis: They don't say here that she talked with the Groveses, she refused to say whether she talked with the Groveses.

The Court: She refused to say that before the grand jury, but she offered that obviously before the court.

Mr. Margolis: No. Her excuse for refusing to say whether [140] she met and talked with the Groveses was that it might serve as a link. She didn't say that before the court. She said, "I don't want to tell you that I met and talked with them because if I did it might serve as a link." Now that is precisely what the witness is saying here, "I don't want to say whether I know Mr. Sparks, whether I know what the chart of organization is, because it might serve as a link."

The Court: Very well. Let us say that you are correct. The witness' statement here that he does or does not know—I do not know what his answer is going to be.

Mr. Margolis: They didn't know in that case either.

The Court: In considering this question the court cannot contemplate that the answer will be yes or no. I do not know what the answer is going to be.

Mr. Margolis: They couldn't tell in that case either.

The Court: So as to say, in effect, that however he answers this question it will connect him with the William Z. Foster case.

Mr. Margolis: No, your Honor. She could have said "No" to the Groveses' question, she could have said "No" there. The court didn't take that into consideration. You don't have to prove that your answer would be a "Yes" answer which would actually incriminate you. All you need to show is that it might tend to, your Honor. Otherwise the condition of claiming the privilege is proving that you are guilty.

The Court: That it might tend to connect her.

Mr. Margolis: That is right. That is sufficient. There is nothing in there which indicated that the court knew that she was going to say she knew the Groveses.

The Court: Very well. Your next point?

Mr. Margolis: That is all I have, your Honor.

The Court: That is all you have to offer in supplement?

Mr. Margolis: Yes.

The Court: Mr. Goldschein, do you have anything more?

Mr. Goldschein: I think the court understands the government's position. I think it would be just taking up the time of the court.

The Court: Very well. It will be the same order

in connection with this witness as with the witness Noble.

Mr. Margolis: I do have one other point. I will make it very brief.

In this case, your Honor, we are dealing with a right, the right of freedom of association, which is protected by the First Amendment, and it is our contention that in a case such as this, where there is an inquiry into the right of freedom of association, as protected by the First Amendment, that at the very least there must be a showing on the part of the government which would justify an invasion into the area of opinion and belief; that if the government says that there is nothing whatsoever incriminating about this, then they are [142] invading the area of belief and association protected by the First Amendment.

The Court: This person is not being accused before the grand jury. The government has a right to inquire and the grand jury has a right to inquire. The grand jury may determine after hearing the testimony that it is a matter of belief or association.

Mr. Margolis: There was a time, your Honor, when the Star Chamber of England said that it had a right to inquire of a man, what is your religion, but that time is no longer, and it was the intention of the First Amendment to preclude inquiries into a man's religious beliefs, into his political beliefs and political associations, and at the very least to require on the part of the government, where an inquiry into that area was being made, to

show some justification therefor. There is no presumption of the validity of an inquiry into that area.

That is the point we want to make.

The Court: I understand.

Mr. Margolis: Before your Honor closes on this matter I want to remind your Honor that the witness in this case has a statement to make that has not yet been done in this matter.

The Court: Yes. Does he desire to make the statement in open court?

Mr. Margolis: No, your Honor. To your Honor.

The Court: He desires to make it privately?

Mr. Margolis: Yes, sir. The Court: As before?

Mr. Margolis: Yes, your Honor.

The Court: Out of the presence of everyone except the court attaches?

Mr. Margolis: Yes, sir.

The Court: Very well. The court will adjourn to chambers. The witness Bissey will come into chambers, together with the court reporter, the Clerk and the bailiff.

(Here followed statement by the witness Bissey to the court in chambers, reported but not transcribed.)

The Court: Is there a stipulation made that the

grand jury is present and that the Clerk need not call the roll?

Mr. Margolis: Yes, your Honor.

Mr. Goldschein: Yes, your Honor.

The Court: The statement made by the witness in chambers privately to the judge adds nothing to what has heretofore been stated in open court by counsel, and is not exculpatory of his refusal to answer the question, nor in justification. For that reason the order will stand.

Mr. Bissey, it is the order of the court that you appear forthwith before the grand jury upon their immediate reconvening into session and answer the questions which were put to you and which you refused to answer on the ground that you might incriminate yourself and which were — will you read [144] them, Mr. Reporter? There are four questions. There is one that you were justified in not answering.

The Witness: Do you know the names of the county officers of the Los Angeles County Communist Party?

The Court: That is question No. 1.

The Witness: Do you know the table of organization of the Los Angeles County Communist Party?

The Witness: Do you know Mr. Ned Sparks?

The Court: That is No. 2.

The Court: No. 3.

The Witness: Do you know Mr. Vincent Russo?

The Court: No. 4.

Do you understand the order of the court, Mr. Bissey?

Mr. Bissey: Sir?

The Court: Do you understand the order of the court?

Mr. Bissey: I understand it is the order of the court to answer those four questions.

The Court: It is the order of the court that you answer those four questions. You will remain in attendance and forthwith appear before the grand jury upon their reconvening, and upon the questions being asked of you that you answer them.

All of the grounds of the objection thereto are overruled.

You will proceed with the next witness. [145] By Mr. Goldschein:

Q. Mr. Drummond, were you in the grand jury room when the witness Ben Dobbs was called in to testify?

A. I was.

Q. Was he placed under oath? A. He was.

Q. Did you take down his testimony?

A. I did.

Q. As to the questions asked and the answers he gave? A. I did.

- Q. Will you read the questions asked him and the answers he gave, please, sir?
- A. "Q. By Mr. Goldschein: Your name is Ben Dobbs, is it, sir? "A. That is right.
 - "Q. Where do you live?
 - "A. 2737 Malabar Street, Los Angeles.
 - "Q. Are you known by any other name?
 - "A. By some people.
 - "Q. What other name are you known by?
 - "A. Benjamin Isgar. I was born with that name.
- "Q. Mr. Dobbs, let me explain your position here to you. The grand jury is not investigating you. You are merely subpoenaed here as a witness [146] to give such evidence as you may have. Do you understand your situation?
 - "A. Yes, I understand what you said.
- "Q. Now, do you know the names of the county officers of the Los Angeles County Communist Party?
- "A. I refuse to answer that question on the ground that the answer will incriminate me.
- "Q. Do you know what the word incriminate means, sir?
- "A. I have some idea of what the word means, but I take it as my privilege to give that answer I just gave, including the word incriminate.
 - "Q. Regardless of what the word means, you

don't mean that you have a right to determine whether or not you will answer or not, do you?

- "A. I refuse to answer that question on the ground it might incriminate me, the one you just asked, regardless of whether I have a full understanding of the meaning of the word incriminate.
 - "Q. I see. All right. All right here, sir.
- "Do you know the table of organization of the Los Angeles County Communist Party?
- "A. I refuse to answer that question on the same grounds.
 - "Q. What is your occupation, sir? [147]
 - "A. I am an organizer.
 - "Q. For what organization?
- "A. I also refuse to answer that question on the ground that it may incriminate me.
 - "Q. Do you know Mr. Ned Sparks?
- "A. I refuse to answer that question on the same grounds.
 - "Q. Do you know Mr. Vincent Russo?
- "A. I refuse to answer that question on the same grounds, it may incriminate me.
- "Mr. Goldschein: Will you wait on the grand jury in that room, please?"

Mr. Goldschein: We insist also, may it please the court, as to this witness that he has no privilege against self-incrimination on the questions asked of him, and ask the same procedure be followed.

The Court: There are five questions here. There were six questions he refused to answer. One of them was not very clear. One of them, he said he

had no understanding of the word "incriminate." I do not think he need answer that because he answered it.

Mr. Margolis, I take it that you wish to make the same motion for a continuance as before?

Mr. Margolis: Yes. We might shorten it, your Honor, by this stipulation, that the record in all respects—— [148]

The Court: Without committing you to a stipulation, perhaps I can straighten it out by an order so that neither side need prejudice their position in the record by a stipulation.

Mr. Margolis: Very well.

The Court: The order will be that it will be deemed that the motion to continue was made on all the grounds and for all the reasons stated by you heretofore in connection with the Noble case. That motion for a continuance will be denied.

It will be deemed that all of the objections heretofore urged in connection with both the Noble case and the Bissey case have been made by you and for all of the reasons and on all of the grounds assigned to each of them in objection on the merits to these questions.

Mr. Margolis: I think that should also include that it will be deemed that the evidence received——

The Court: And the evidence received.

Mr. Margolis: ——together with the stipulations will be deemed received in this case.

The Court: That is correct, as well as the offers of proof.

Mr. Margolis: That is right.

The Court: The offers of proof will be rejected and the objections will be overruled and denied.

Does this witness desire to make a statement to the court?

Mr. Margolis: Yes, your Honor.

In addition to the argument that has previously been made, there is one question here which is somewhat different, if your Honor please, than any of the other questions.

The Court: You mean, what is your occupation? Mr. Margolis: No, your Honor. The question, what is your occupation, was answered. That was answered by saying organizer. The question—I don't remember the exact wording—but it was, organizer for what organization. I believe that is a correct statement of the record, your Honor.

The Court: For what organization?

The Witness: Yes, sir.

The Court: He said, "I am an organizer," and he declined to answer the question, "for what organization?"

Mr. Margolis: Yes, your Honor.

It seems to me that there we are getting directly into the question of being an officer with the possibility that this sort of an answer might incriminate him on the ground that it might tend to establish that this individual is an officer of an organization which the United States Attorney has contended advocates the overthrow of the American

form of government by force and violence, and upon the basis of which he has obtained other indictments against other officers and [150] has said that he would obtain similar indictments in Los Angeles and elsewhere.

The Court: It is not your contention, again may I ask, that the answer to that would indicate that he is a member of an organization which advocates the overthrow of the government by force and violence?

Mr. Margolis: The answer to it might indicate that he is an officer of an organization which the government contends, which the United States Attorney General has declared, advocates this, and upon the basis of which he might be indicted by the United States Attorney.

I am certainly not prepared to concede that the organization advocates that. As I say, I stand on the Schneiderman case.

The Court: I just wanted the record straight. Mr. Margolis: We think that while the other questions are sufficiently direct to raise the issue, that here you get really right down to the heart of the thing, and if he can be required to answer this question then Mr. Foster could have been called before the United States grand jury and if he were asked, "What is your occupation?" and he said. "I am an organizer," and he was asked, "For what organization?" then he would have been compelled to answer even though there is an indictment against him because of his being an officer of that organization. [151]

Mr. Goldschein: May it please the court, the government denies that there is any contention here that the Communist Party is an illegal organization or that they, as a party, advocate the overthrow of the government by force and violence. There is nothing that has been said in this courtroom, or by anyone else for the government, with reference to the statement that Mr. Margolis continuously has made in this case, and I would like to straighten him out now.

Mr. Margolis: If your Honor please, we have offered to prove that this is the government's position, and certainly counsel for the government cannot simply, by getting up and making a denial, deprive us of the offer to prove. We are prepared, if given an opportunity, to establish that that is the position of the government.

The Court: I have ruled on the subject. It is not a question of counsel understanding each other, it is a question of me understanding each of counsel, and I think I understand the position of the government and the position of counsel here who have advocated their cause.

Mr. Margolis: Mr. Dobbs wishes to make a statement.

The Court: Mr. Dobbs, are you here?

Mr. Dobbs: Yes, sir.

The Court: Will you stand up, please, so I can see you.

(Mr. Dobbs stood as requested.)

Do you desire to make a statement to the court?

Mr. Dobbs: I do, sir.

The Court: Under the same conditions as I indicated heretofore to the other witnesses?

Mr. Dobbs: Yes, sir.

The Court: Very well. We will retire to chambers with the bailiff, reporter and the Clerk.

The Court: Is it stipulated that the grand jury is present as before?

Mr. Margolis: Yes, your Honor.

The Court: The witness Dobbs has made a statement to the court privately in chambers. Nothing has been added to that which has already been urged by counsel and nothing has been said in exculpation of his refusal to answer the question, nor in justification.

For that reason, Mr. Dobbs, the order of the court will be that you are now ordered and directed to answer the five questions, namely——

The Witness: Now, do you know the names of the County Officers of the Los Angeles County Communist Party?

The Court: No. 1.

The Witness: Do you know the table of organization of the Los Angeles County Communist Party?

The Court: No. 2.

The Witness: For what organization? [153]

The Court: No. 3.

The Witness: Do you know Mr. Ned Sparks?

The Court: No. 4.

The Witness: Do you know Mr. Vincent Russo?

The Court: No. 5.

You are ordered to answer those questions and report forthwith to the grand jury immediately upon their reconvening and respond to them.

Do you understand the order, Mr. Dobbs?

Mr. Dobbs: Yes, sir.

The Court: Very well.

Mr. Goldschein: The next witness is Delphine Murphy Smith.

The Court: Mrs. Smith?

Mrs. Smith: I am present.

The Court: Very well.

Q. (By Mr. Goldschein): Now, Mr. Drummond, were you in the grand jury room when Mrs. Delphine Murphy Smith appeared as a witness?

A. I was.

Q. Was she sworn? A. She was.

Q. Did you take down the questions propounded to her and the answers she made?

A. I did. [154]

Q. Will you read the questions asked and the answers made, please, sir.

A. "Q. (By Mr. Goldschein): Your name is Delphine Murphy Smith? Is that Miss or Mrs.?

"A. Mrs.

"Q. Mrs. Delphine Murphy Smith?

"A. Right.

"Q. Where do you live?

"A. 1410 Amapola, Torrance.

"Q. I want you to know that this grand jury is not investigating you, that you are merely subpoenaed here as a witness to testify to such facts as you may have any knowledge of. Do you understand your position? A. Yes, I do.

- "Q. Now, Mrs. Smith, do you know the names of the county officers of the Los Angeles County Communist Party?
- "A. I refuse to answer on the ground it may incriminate me.
 - "Q. May what?
- "A. Intimidate is not the word. Incriminate I believe is the word I wanted to use.
- "Q. You are not familiar with the term incriminate, are you? [155]
 - "A. Not too familiar with it, no.
- "Q. I will explain it for you. The term in connection with the business of this grand jury simply means this: that if the answer to the question I just asked you would involve you in the commission of a crime against the United States Government, you can then claim your privilege against self-incrimination. In other words, you are not compelled to give any facts which may tend to involve you in a Federal crime. Now, if the answer to the question will not involve you in the commission of a crime against the United States government, then you must answer that question. Do you understand?
 - "A. I understand you.
- "Q. All right. Now, will you answer my question?
- "A. I still refuse to answer on the same grounds.
 - "Q. All right. Do you know the table of or-

ganization of the Los Angeles County Communist Party?

- "A. I refuse to answer on the ground that it may incriminate me.
 - "Q. Do you know Mr. Ned Sparks?
- "A. I refuse to answer on the ground that it may incriminate me.
 - "Q. What is your business, please, Madam?
 - "A. I am a housewife.
 - "Q. What does your husband do?
- "A. I refuse to answer on the ground that it may incriminate me.
 - "Q. You really don't believe that, do you?
- "A. I refuse to answer on the grounds it may incriminate me.
- "Q. But you really don't believe it would incriminate you, do you?
- "A. I am sorry. I refuse to answer on the ground it may incriminate me.
- "Mr. Goldschein: All right, Madam. We will recess you. You are not excused. Will you wait in that room that you just came from?

"The Witness: Of course."

Mr. Goldschein: We insist, may it please the court, that none of the questions asked the witness would tend to incriminate her for the violation of any Federal offense, and insist the witness be compelled to answer.

The Court: Mr. Margolis, without repeating all of the grounds or without committing you to a stipulation, it may be deemed that the motion for a continuance has been made in this case as in the other cases, and for the same grounds and all the reasons given. The order of the court is that the motion for a continuance is denied. [157]

It may be deemed also for the purpose of the record that on the merits the objection to compelling the witness to answer the question has been made by you on her behalf on all of the grounds and for all of the reasons assigned in connection with each one of the previous witnesses; and that there has been admitted in evidence the same evidence and the same stipulations as the others, and that the same proffers of proof were made.

Mr. Margolis: Yes.

The Court: It will be the same order, except that there are two questions here which I think the witness need not answer. Does this witness desire to make a statement to the court privately?

Mr. Margolis: Yes, your Honor.

The Court: As with the other witnesses, under the same conditions?

Mr. Margolis: Yes.

The Court: Very well. The court will adjourn to chambers.

(Here followed statement by the witness Smith to the court in chambers, reported but not transcribed.)

The Court: Same stipulation concerning the grand jury?

Mr. Margolis: Yes, your Honor.

Mr. Goldschein: Yes.

The Court: The witness has made a statement to the [158] court privately in chambers which adds nothing to the statement and reasons and objections made by her counsel, and which does not tend to exculpate her in any way for her refusal to answer the question, nor justify her refusal, nor tend to show that it would incriminate her at all.

For that reason the witness is now ordered and directed to answer the following questions—will you read them?

The Witness: Now, Mrs. Smith, do you know the names of the county officers of the Los Angeles County Communist Party?

The Court: Mrs. Smith, you are ordered and directed to answer that question.

The Witness: Do you know the table of organization of the Los Angeles County Communist Party?

The Court: You are ordered and directed to answer that question.

The Witness: Do you know Mr. Ned Sparks? The Court: You are ordered and directed to answer that question.

The Witness: What does your husband do?

The Court: What is the next question?

The Witness: That is the last one.

The Court: There is another one; you really don't believe that, do you?

The Witness: Oh, yes. You really don't believe that, do you? [159]

The Court: She is not ordered to answer the last question, You really don't believe that, do you.

The question, What does your husband do, raises another point. Her ground for not answering that was on the ground that it might incriminate her. She is ordered and directed to answer that question.

Mrs. Smith, you are ordered and directed to answer the questions as indicated and to report immediately to the grand jury upon their reconvening and answer them.

Do you understand the order of the court, Mrs. Smith?

Mrs. Smith: Yes, I do.

The Court: Very well.

Mr. Goldschein: The next witness, may it please the court, is Mrs. Miriam Brooks Sherman.

- Q. Mr. Drummond, were you in the grand jury room this afternoon when Mrs. Miriam Brooks Sherman appeared as a witness?

 A. I was.
 - Q. Was she sworn? A. She was.
- Q. Did you take down the questions that were propounded to her and the answers she gave?

A. I did.

- Q. Will you read those questions and answers, please?
- A. "Q. (By Mr. Goldschein): Your name is Miriam [160] Brooks Sherman?
 - "A. Yes, sir.
 - "Q. Miss? A. Mrs.
- "Q. Mrs. Sherman, you are not under investigation by this grand jury. You are merely subpoenaed here as a witness to testify to such facts as you may have. Do you understand your posi-

tion? A. Yes, I do.

- "Q. They want to know from you whether or not you know the names of the county officers of the Los Angeles County Communist Party.
- "A. I would refuse to answer that on the ground that it may incriminate me.
- "Q. Do you know what the word incriminate means in connection with your statement?
- "A. Well, I am not an attorney and I don't think I know the full legal definition of it, but I understand that it is my privilege to claim the right to refuse to answer that question on the ground of incrimination.
- "Q. Of course, you got the advice of an attorney before coming in here with reference to your privilege and you know what your privilege is against self-incrimination, don't you? [161]
 - "A. Yes, I do.
- "Q. And let me explain what your privilege as to self-incrimination means. If the answer that you would give to my question would tend to incriminate you, tend to make you a defendant in a Federal criminal case, it would tend to show that you violated a Federal statute—now, you haven't violated any Federal statute in connection with that question, have you?
 - "A. In connection with what question, sir?
- "Q. Would this answer, the answer to the question I asked you, involve you in the commission of a Federal offense? And the question that I asked was this: Do you know the names of the county

officers of the Los Angeles County Communist Party?

- "A. I still think that my previous answer is correct, that it may incriminate me.
- "Q. All right. Let me ask you this: Do you think that the answer that you would give to that question would involve you in the commission of a Federal offense?
 - "A. It might incriminate me.
- "Q. That is what you said before. I want to make sure we understand each other.
 - "A. Yes. [162]
- "Q. Do you think it would involve you in the commission of a criminal offense?
 - "A. No, I believe it would incriminate me.
 - "Q. I see. Do you know Mr. Ned Sparks?
- "A. I refuse to answer that question on the ground it might incriminate me.
 - "Q. What is your occupation?
 - "A. I am a musician.
 - "Q. Madam? A. I am a musician.
 - "Q. Are you employed?
 - "A. Yes, I am employed.
 - "Q. Where?
- "A. I also would like to refuse to answer that, on the ground that it might incriminate me.
 - "Q. What instrument do you play?
 - "A. I play the piano.
 - "Q. Any other? A. No.
- "Mr. Goldschein: All right, then, we will recess you. You are not excused. Will you wait in that same room from which you just came?

"The Witness: "Yes, I will."

Mr. Goldschein: We insist, may it please the court, that the claim of privilege against self-incrimination is not well [163] founded and ask the court to ask the witness to answer the questions.

The Court: It may be deemed on behalf of the witness that the motion for a continuance has been made on all of the grounds and for the reasons heretofore previously assigned by Mr. Margolis in connection with the other matters?

Mr. Margolis: Yes, your Honor.

The Court: The motion for a continuance is denied.

It may also be deemed that there has been offered in evidence the documents and the stipulations and the same proffers of proof made on behalf of this witness as the previous ones, and that all the grounds of objection and reasons heretofore urged in opposition to the motion of the government have been urged on behalf of this defendant as if they were again repeated?

Mr. Margolis: I think your Honor said that it would be deemed that certain evidence has been offered.

The Court: The same evidence.

Mr. Margolis: The same evidence.

The Court: And the same offers of proof.

Mr. Margolis: Yes, and the same evidence as was received in the other cases is also received in this case?

The Court: Yes. That is what I meant to say.

Mr. Margolis: Yes.

The Court: Does this witness wish to make a statement [164] to the court privately?

Mr. Margolis: Yes, sir.

The Court: The witness does?

Mr. Margolis: Yes.

The Court: Very well. We will adjourn to chambers again.

(Here followed statement by the witness Sherman to the court in chambers, reported but not transcribed.)

The Court: Same stipulation? Mr. Margolis: Yes, your Honor.

Mr. Goldschein: Yes.

The Court: The witness has made a statement to the court privately in chambers, which has added nothing to the grounds or legal reasons advocated on her behalf by her counsel, nor has she stated anything which would indicate an exculpation for her refusal to answer the question, nor anything at all which would indicate that the answers to the questions might tend to incriminate her. For that reason the same order will be made in this case as in the previous case, and in order that the witness may have an understanding of the order the reporter will now read—I think there were only three—the questions asked of this witness.

The Witness: Do you know the names of the county officers of the Los Angeles County Communist Party? [165]

The Court: Mrs. Sherman, I just want you to be able to hear and understand the order. That is the first question.

The Witness: Do you know Mr. Ned Sparks?

The Court: That is the second question.

The Witness: And the last one: Are you employed?

A. Yes, I am employed.

Q. Where?

The Court: That is the third question.

Mrs. Sherman, you are ordered and directed to answer the three questions which I have just indicated, and to report immediately to the grand jury and answer those questions upon them being asked of you immediately upon the reconvening of the grand jury.

Do you understand the order of the court?

Mrs. Sherman: Yes, I do, sir.

The Court: Very well.

Mr. Goldschein: The next witness, may it please the court, is Philip Bock.

- Q. Mr. Drummond, were you in the grand jury room this afternoon when Mr. Philip Bock appeared as a witness?

 A. I was.
 - Q. Was he sworn? A. He was.

The Court: Excuse me. By the way, in connection with the last witness, there was one question asked of her, have you violated any Federal statute. She need not answer that [166] question.

Proceed.

Q. (By Mr. Goldschein): Did you take down

in shorthand the questions propounded to the witness and the answers he made? A. I did.

- Q. Will you read the questions and answers. please?
- A. "Q. (By Mr. Goldschein): Mr. Bock, your name is Philip Bock, is it not?
 - "A. Yes, sir.
 - "Q. Where do you live?
 - "A. 4213 Yosemite Way.
 - "Q. Los Angeles? A. Yes, sir.
- "Q. Mr. Bock, I want you to know that you are not under investigation by this grand jury, that you are merely here as a witness to testify to the facts that you know. Now, do you understand that phase of it? A. Yes.
- "Q. All right. Now, do you know the names of the county officers of the Los Angeles County Communist Party?
- "A. I refuse to answer that question on the ground it may incriminate me.
- "Q. Do you know what the word incriminate means, [167] Mr. Bock?
- "A. I cannot give the legal definition, but I know what it means.
 - How far did you go to school?
 - "A. I completed one year of law school.
- "Q. Do you know the table of organization of the Los Angeles County Communist Party?
- "A. I refuse to answer that question on the ground that it might incriminate me.
- "Q. For the violation of a Federal offense, Mr. Bock?

- "A. I am not qualified to answer that question.
- "Q. Now, the only incrimination you can claim is for a violation of a Federal offense. Now, let me explain that to you. If the answer you give may tend to involve you in the commission of an offense against the Federal statutes, then you may claim privilege against self-incrimination. Do you understand it now?

 A. Yes.
- "Q. You still think that the answer to the question may involve you in the commission of a Federal offense?
- " Λ . I refuse to answer that last question on ground that I think it might incriminate me.
- "Q. In other words, involve you in the commission of a Federal offense?
- "A. I have answered it to the best of my ability.
- "Q. I just want to make sure that you and I understand each other and we are both talking about the same thing. Are we?
- "A. I can't be sure on that. I know what is in my mind, not in yours.
- "Q. Now, let's state it clearly: Do you believe that the answer to the question that you may give would tend to involve you in the commission of a Federal offense?
- "A. I can't conscientiously answer that question, but I have answered it as best I could. I can't answer it along any technical lines. I don't know the laws that well on that end.
 - "Q. Then you don't know that it will involve

you in a criminal offense, do you? You don't know that the answer to the question would tend to involve you in the commission of a Federal crime, do you?

- "A. I refuse to answer that question on the ground that it might tend to incriminate me. [169]
- "Q. You mean you refuse to answer my question, the last question I asked you? My question is this: Do you believe that the answer that you will give, that the answer to that question that I asked you originally, would involve you in the commission of a Federal offense?
- "A. I refuse to answer this question on the ground that it might tend to incriminate me.
- "Q. All right, sir. Do you know the table of organization of the Los Angeles County Communist Party?
- "A. I refuse to answer that question on the ground that it might tend to incriminate me.
 - "Q. What is your occupation, sir?
 - "A. I am an organizer.
 - "Q. For whom?
- "A. I refuse to answer that question on the ground that it might tend to incriminate me.
- "Mr. Goldschein: All right, we will recess you. You are not excused. Will you wait in that same room that you just left, please?"

Mr. Goldschein: We insist that this witness does not have any claim of privilege against self-incrimination and ask the court to instruct the witness that he must answer.

The Court: It will be deemed that the same rec-

ord is [170] made in respect to this witness as was made with the previous witnesses?

Mr. Margolis: Yes, your Honor.

The Court: The same motions?

Mr. Margolis: Same motions, same objections, same evidence.

The Court: It will be the same ruling.

Does this witness desire to make a statement to the court privately?

Mr. Margolis: Yes, your Honor.

The Court: Very well. The witness will come into chambers.

(Here followed statement by the witness Bock to the court in chambers, reported but not transcribed.)

The Court: Same stipulation, Mr. Margolis, concerning the grand jury?

Mr. Margolis: Yes, your Honor.

The Court: Very well.

The witness has made the statement to the court in private and he has said nothing in addition to that which has been urged by his counsel, and has said nothing in exculpation of his refusal to answer the question, and has said nothing which would tend to show that the answers to them might incriminate him.

For that reason the order of the court will be that he [171] will answer the three questions:

Do you know the names of the county officers of the Los Angeles County Communist Party?

Do you know the table of organization of the Los Angeles County Communist Party?

What was the next question?

The Witness: What is your occupation, sir? A. I am an organizer. Q. For whom?

The Court: You will be directed to answer the third question, for whom is he an organizer. The witness is not directed to answer the question, Do you know what incrimination means and do you believe that you will incriminate yourself, and so forth.

Mr. Bock, you understand the order of the court, do you?

Mr. Bock: Yes, sir.

The Court: The order will be that as soon as the grand jury reconvenes you will attend upon them and respond to the three questions which you have been directed to answer.

The next matter.

Mr. Goldschein: The next witness, may it please the court, is Mrs. Dorothy Baskin Forest.

- Q. Mr. Drummond, were you in the grand jury room this afternoon when Mrs. Dorothy Baskin Forest appeared as a witness?

 A. I was. [172]
 - Q. Was she placed under oath?
 - A. She was.
- Q. Did you take down the questions propounded to her and the answers she gave? A. I did.
 - Q. Will you please read those questions, sir?
- A. "Q. (By Mr. Goldschein): You are Mrs. Dorothy Baskin Forest? A. That is right.
- "Q. Mrs. Forest, this grand jury is investigating matters that do not concern you at all, other than as a witness. You are not being investigated. Do you understand?

 A. I do.

- "Q. Now, we want certain information from you. Do you know the names of the county officers of the Los Angeles County Communist Party?
- "A. I refuse to answer on the ground it may incriminate me.
- "Q. Do you mean, Mrs. Forest, that the answer that you will give to that question may tend to involve you in the commission of a Federal offense?
- "A. I wouldn't know the answer to that without consulting with my attorney.
- "Q. Do you know what the word incriminate means? [173]
- "A. I would have to consult with my attorney on the legal meaning of that word.
 - "Q. You say you have?
- "A. No, I would have to I would have to consult with him.
 - "Q. Haven't you already consulted with him?
 - "A. Well, I don't think that is a proper question.
 - "Q. You say you have not?
- "A. I mean I would like to consult with my attorney before I answer that question.
- "Q. Didn't you already talk about that particular question with your attorney?
- "A. I did not talk about that particular question, as to the meaning of the word incriminate.
 - "Q. What did you talk to him about?
- "A. Whatever I talked about with my attorney is something between my attorney and me, I understand.
 - "Q. I see. Do you want this grand jury to believe

that you have not as yet discussed that question with your attorney?

- "A. I want this grand jury to believe that I refuse to answer that question until I consult with my attorney, on the ground that it might incriminate [174] me.
- "Q. I see. All right. Do you know the table of organization and duties of the officers of the Los Angeles County Communist Party?
- "A. I refuse to answer that question on the ground it might incriminate me.
- "Mr. Goldschein: All right, Mrs. Forest, we will recess you for just a few moments. Will you wait in the anteroom, please?
- "Mr. Carter: You are not excused from attendance on the grand jury."

Mr. Goldschein: We insist, may it please the court, that the witness has no claim of privilege against self-incrimination and ask the court that she be directed to answer.

The Court: It may be deemed that all of the motions made in connection with the other matters are made in connection with this matter, and all of the matters and things and evidence and stipulation and offers of proof in connection therewith may be deemed to have been made in connection with this matter, with the same force and effect as if they were now repeated.

Mr. Margolis: I am getting a little tired, your Honor, May I have that repeated?

The Court: It may be deemed that you have made the same [175] motion for a continuance on all of the grounds and reasons you assigned in connection with the others?

Mr. Margolis: Yes.

The Court: Very well. The motion for a continuance is denied.

It may be deemed that you have made the same objections on behalf of this witness that you made in connection with the others on all the grounds, on the evidence introduced and on the offers of proof and the stipulations which were made in connection with the others?

Mr. Margolis: Yes, your Honor.

The Court: The objections will be overruled.

Does this witness desire to make a statement privately to the court?

Mr. Margolis: Yes, your Honor, but before that happens I think that there is a duty upon the court to advise counsel for the government of the great impropriety of their attempt to obtain in the grand jury room the private consultation between an attorney and client, which I am sure counsel for the government must know is a privileged communication, and this constant harassment and attempt by indirection through asking questions of what is means by "incrimination" to get an admission of the commission of a crime. I think it is highly improper, and I think it is the duty of the court to so inform counsel for the government. [176]

The witness desires to make a statement to the court.

The Court: Mrs. Forest, do you so desire?

Mrs. Forest: Yes, I do.

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The Court: Very well.

Mr. Margolis: Could we have a ruling on our request?

The Court: You will shortly.

We will adjourn to chambers.

(Here followed statement by the witness Forest to the court in chambers, reported but not transcribed.)

The Court: Same stipulation?

Mr. Margolis: Yes, your Honor.

The Court: The witness, Mrs. Forest, made a statement to me privately in chambers which has added nothing to the objections heretofore made by her counsel in open court and which has indicated nothing in exculpation of her refusal to answer the question, and which has indicated nothing which would tend to incriminate her in response to the three questions—will you read them, please?

The Witness: Do you know the names of the county officers of the Los Angeles County Communist Party?

Do you know the table of organization and duties of the officers of the Los Angeles County Communist Party?

The Court: And there was a third one?

Mr. Margolis: There was a number of others, what they had said to counsel and others. [177]

The Court: Just a moment.

Are you employed? Was that it?

The Witness: That wasn't asked of her. The last question she was asked was the one on the table of organization and duties.

The Court: Very well.

The other questions asked of the witness she will not be required to answer on the ground that they might incriminate her.

Mrs. Forest, you are now ordered and directed to answer the two questions, Do you know the names of the county officers of the Los Angeles County Communist Party, Do you know the table of organization and duties of the officers of the Los Angeles County Communist Party, and to attend upon the grand jury immediately upon their reconvening and to answer those questions.

The other questions asked of the witness do not require any ruling from the court except to state that the witness is not required to answer them.

In so far as counsel's objection as to the witness' understanding of the word "incriminate," I cannot see anything objectionable to it. I do not think that the effort sought was to secure any confidential information between attorney and client; rather it was to ascertain her understanding of the word "incriminate." [178]

Mr. Margolis: She was asked about conversations between client and attorney. It is right in the record. I think perhaps your Honor didn't get it.

The Court: I am not ordering her to answer those questions.

Mr. Margolis: But there were those questions, your Honor, to which I violently object and, to complete my objection, I think counsel ought to be instructed that he has no right to ask questions like that.

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The Court: I think that the inquiry was appropriate and proper. I do not think that counsel, however, should pursue a course of inquiry concerning conversations between an attorney and client.

Mrs. Forest, do you understand the order of the court?

Mrs. Forest: I understand the order.

The Court: Very well. The next matter.

Mr. Goldschein: The next witness, may it please the court, is Samuel Harry Kasinowitz.

- Q. Mr. Drummond, were you in the grand jury room this afternoon when Mr. Samuel Harry Kasinowitz appeared as a witness?

 A. I was.
 - Q. Was he placed under oath? A. He was.
- Q. Did you take down in shorthand the questions propounded [179] to him and the answers he gave?
 - A. I did.
- Q. Will you please read those questions and answers, please?
- A. "Q. (By Mr. Goldschein): Your full name is Samuel Harry Kasinowitz?
 - "A. That is right.
 - "Q. Where do you live, Mr. Kasinowitz?
 - "A. Los Angeles.
 - "Q. Sir? A. Los Angeles.
 - "Q. Your address?
 - "A. 4320 Lockwood Avenue.
- "Mr. Kinnison: Will you speak a little louder, please?
- "Q. (By Mr. Goldschein): You are not under investigation by this grand jury, Mr. Kasinowitz. You are merely here as a witness to testify to such

facts as you know. Now, do you know the names of the county officers of the Los Angeles County Communist Party?

- "A. Well, I refuse to answer that question on the ground it would incriminate me.
- "Q. Do you know what the term incriminate means, Mr. Kasinowitz? [180]
- "A. I think I have a notion as to what it means. I don't know the exact legal definition.
- "Q. Well, let's see if I can't explain it to you. If you believe that the answer you may give to the question I asked you would tend to involve you in the violation of a Federal offense, you then may claim privilege against self-incrimination. Do you believe that the answer you will give to that question would involve you in the commission of a Federal offense?

 A. I believe so, yes, sir.
 - "Q. What is your occupation, Mr. Kasinowitz?
 - "A. A printer.
 - "Q. Where are you employed?
 - "A. I am unemployed.
 - "Q. You are unemployed at present?
 - "A. Yes, sir.
- "Q. Do you know the table of organization of the Los Angeles County Communist Party?
- "A. Well, I would have to refuse to answer that question on the ground that it might incriminate me.
- "Mr. Goldschein: All right, we will recess. You are not excused. We will just recess you. Wait in that room which you just left."
- Mr. Goldschein: We insist, may it please the court, that [181] the witness has no proper claim to

a privilege against self-incrimination and ask the court to instruct the witness that he must answer the questions.

The Court: It may be deemed that the motion for a continuance is made in connection with this matter on the same grounds and for the same reasons as that heretofore indicated?

Mr. Margolis: Yes, your Honor.

The Court: The motion is denied.

It may also be deemed that the same objections made on behalf of this witness by counsel in connection with the previous witnesses have been made on his behalf, and the same matters have been received in evidence, the same stipulations and the same offers of proof made, as well as all of the other grounds and reasons for the objection?

Mr. Margolis: Yes, your Honor.

The Court: The objections will be overruled.

Does this witness desire to make a statement to the court privately?

Mr. Margolis: Yes, sir.

The Court: Very well. We will adjourn to chambers with Mr. Kasinowitz.

(Here followed statement by the witness Kasinowitz to the court in chambers, reported but not transcribed.)

The Court: Usual stipulation?

Mr. Margolis: Yes, your Honor. [182]

The Court: Mr. Kasinowitz has made a statement to the court privately in chambers, to which he has added nothing to the grounds already advocated generally and specially by his counsel in his behalf, and from which it does not appear that there is any ground of exculpation for his refusal to answer the two questions propounded to him, and from which it does not appear that his answer to them would incriminate him.

For that reason the witness is now ordered and directed immediately upon the reconvening of the grand jury to attend and answer the two questions: Do you know the table of organization of the Los Angeles County Communist Party? Do you know the names of the county officers of the Los Angeles County Communist Party?

Do you understand the order of the court, Mr. Kasinowitz?

Mr. Kasinowitz: Yes, sir.

The Court: Very well. The next matter.

Mr. Goldschein: The next witness, may it please the court, is Frank Edward Alexander.

- Q. Mr. Drummond, were you in the grand jury room this afternoon when Frank Edward Alexander appeared as a witness?

 A. I was.
 - Q. Was he sworn? A. He was.
- Q. Did you take down in shorthand the questions propounded to him and the answers he gave? [183]
 - A. I did.
- Q. Will you please read those questions and answers?
- "Q. (By Mr. Goldschein, Assistant Attorney General): Your name is Frank Edward Alexander, is that right? A. Yes.
 - "Q. Where do you live?

- "A. 78 Hurlburt Street, Pasadena.
- "Q. I want to let you know before we start that you are not under investigation by this grand jury for any offense. You are merely called here as a witness to give evidence that you may have of certain facts that the grand jury is interested in. Do you understand that?

 A. I do.
- "Q. Now, do you know the names of the county officers of the Los Angeles County Communist Party?
- "A. I refuse to answer that on the basis it may incriminate me.
- "Q. You mean that to answer that question would tend to incriminate you for the violation of a Federal offense?
- "A. I just refuse to answer on the basis that it might incriminate me.
- "Q. Do you know what the word incriminate means? A. I do. [184]
- "Q. Well, let me explain it to you. The word incriminate in connection with this matter means this: that you say that the answer that you may give to the question I asked will tend to involve you in the violation of one of the Federal laws. Is that your understanding of the term incriminate?
 - "A. I believe so.
 - "Q. Sir? A. I believe so.
 - "Q. And you refuse to answer that question?
 - "A. On the basis that it may incriminate me.
- "Q. Do you know the table of organization and the duties of the county officers of the Los Angeles County Communist Party?

"A. I refuse to answer that on the basis it might incriminate me.

"Mr. Goldschein: All right. Wait outside in the anteroom, will you?

"Mr. Carter: You are not excused from attendance. You are still in attendance on the grand jury."

Mr. Goldschein: We insist, may it please the court, that the witness has no privilege against self-incrimination and request that the court instruct the witness that he must answer the questions. [185]

The Court: It may be deemed that the motion for a continuance is made on all of the grounds and for the reasons heretofore assigned?

Mr. Margolis: Yes, your Honor.

The Court: That motion is denied.

It may be also deemed that the same objections to the granting of the motions are made on behalf of this witness, on the matters introduced in evidence, the stipulations, and all of the grounds and for the reasons assigned in connection with the other matters, and that the same offers of proof were made?

Mr. Margolis: And the same evidence was offered and received.

The Court: The same evidence received, and stipulations.

Mr. Margolis: Yes, your Honor.

The Court: Very well. The objections are overruled.

Does this witness desire to make a statement?

Mr. Margolis: Yes, sir.

The Court: Very well. We will adjourn to chambers.

(Here followed statement by the witness Alexander to the court in chambers, reported but not transcribed.)

The Court: The same stipulation with regard to the grand jury?

Mr. Margolis: Yes, your Honor.

Mr. Goldschein: Yes. [186]

The Court: The witness Alexander has made a statement to the court privately and his statement has added nothing to the grounds which have here-tofore been urged on his behalf by his counsel, and has indicated nothing which is in exculpation of his refusal to answer the question, and which has indicated nothing which will tend to show that the answers to them would incriminate or tend to incriminate him.

For that reason the witness is now ordered and directed to answer the two questions—

The Witness: Now, do you know the names of the county officers of the Los Angeles County Communist Party? Do you know the table of organization and the duties of the county officers of the Los Angeles County Communist Party?

The Court: Mr. Alexander, you are ordered and directed immediately upon the reconvening of the grand jury, to be in attendance upon them and to answer those two questions.

Do you understand the order of the court?

Mr. Alexander: Yes, I do.

The Court: Very well. The next matter.

Mr. Goldschein: The next and last witness, may it please the court, is Henry Steinberg.

- Q. Mr. Drummond, were you in the grand jury room this afternoon when Henry Steinberg, the witness, was called before the grand jury?
 - A. Yes, sir. [187]
 - Q. Was he placed under oath?
 - A. He had been placed under oath this morning.
 - Q. All right, sir.

Did you take down the questions propounded to him and the answers he gave? A. I did.

- Q. Will you read the questions and answers, please?

 A. Beginning with the morning?
 - Q. Beginning with the morning session.
- A. "Q. (By Mr. Goldschein): Your name is Henry Steinberg? A. That is right, sir.
 - "Q. Where do you live, sir?
 - "A. 4416 Connelly Street, Los Angeles.
- "Q. Mr. Steinberg, you are subpoenaed to appear before this grand jury merely as a witness, to testify to some matters that they are interested in officially. Now, we are not investigating you, and all we want from you is what information you have on the matter at hand. Now, do you know the names of the county officers of the Los Angeles County Communist Party?
- "A. Can I have legal counsel in this? Am I entitled to legal counsel?
 - "Q. Yes, you are. [188]
 - "A. Can I get legal counsel?
 - "Q. Have you counsel available?
 - "A. I can get in touch with counsel, I think.
- "Q. Are you fearful that this may involve you in any way?

- "A. No, but I do not want to incriminate myself nor degrade anyone in answering any of the questions before this grand jury.
- "Q. Do you understand what the term incriminate means, Mr. Steinberg?
- "A. I would like to see counsel before I answer any questions, so that I do not incriminate myself.
- "Q. Do you know what the term incriminate means?
- "A. I would like to see counsel before I in any way discuss any of the questions that you might ask of me.
- "Mr. Carter: You are not entitled, of course, to have counsel with you in the grand jury room. You understand that, don't you?
- "The Witness: I would like to have counsel, though, before answering any questions.
- "Mr. Goldschein: It is now 20 minutes after 10:00. Will it take longer than 10 minutes to reach him by phone?
- "The Witness: I can call and try to get him [189] here.
- "Mr. Goldschein: We will expect you back at 10:30.
- "Mr. Carter: You are not excused from attendance, you understand that, Mr. Steinberg."

Then he was recalled at 2:40 o'clock this afternoon.

- Q. Will you read that, please.
- "Q. (By Mr. Goldschein): Mr. Henry Steinberg recalled. Mr. Steinberg, you asked to be recessed so that you could consult with counsel. Now, that was at 10:20. It is now 20 minutes of 3:00. I want to

ask you the question I asked you this morning that you did not answer. Do you know the names of the county officers of the Los Angeles County Communist Party?

- "A. To answer that question, sir, would tend to incriminate or degrade me.
 - "Q. Incriminate you for what?
- "A. In speaking to my counsel, they contend that to answer questions of that type would tend to do that, sir.
 - "Q. Tend to do what?
 - "A. Tend to incriminate or degrade me.
- "Q. Tend to incriminate you for violation of a Federal offense? [190]
- "A. Might tend to incriminate me in some manner if I answer the question.
- "Q. Do you know what the word incriminate means?
- "A. I think I do, based upon discussions with counsel.
- "Q. Let me explain it to you. The term incriminate as used here means to involve you in the violation of a Federal law. Do you mean that you refuse to answer this question because to answer it may give evidence that would tend to involve you in the violation of a Federal offense?
- "A. Not necessarily, sir, but to answer that question may tend to incriminate me in a way that I do not know, and pending my ability to discuss with counsel the specific question, I would have to answer on that basis, sir.
 - "Q. You refuse to answer?

"A. I do not refuse to answer, sir, but I have answered in the best manner in which I can.

"Mr. Goldschein: Will you step aside and wait in that room? Wait just a minute. Will you resume your seat, please?

- "Q. Do you know the table of organization and duties of the officers of the Communist Party of [191] Los Angeles County?
- "A. I can't answer that either, sir, on the basis that it may incriminate or it may degrade me.
 - "Q. You refuse to answer that on that grounds?
- "A. No, I do not, sir. I do not refuse to answer, but I am acting on the basis of my counsel's information, that that should be answered in the manner in which I am answering now and no other manner. But I do not refuse to answer, sir. That is the only way in which I can answer that question, sir.

"Mr. Goldschein: All right, that is all.

"Mr. Carter: You are not excused from attendance.

"Mr. Goldschein: Just wait in the outer room."

Mr. Goldschein: We insist, may it please the court, that the witness has no privilege against self-incrimination on the questions propounded to him. They pertain to other people. We ask the court to instruct the witness that he must answer the questions.

The Court: It may be deemed the same motion for a continuance is made in connection with this matter on all of the grounds and for the reasons assigned in connection with the previous matters?

Mr. Margolis: Yes, your Honor. [192]

The Court: The motion for a continuance is denied.

It may be also deemed that all of the objections heretofore urged on behalf of the previous witnesses have been urged, and all of the grounds and reasons on behalf of this witness, that the same material has been received in evidence, the same stipulations and that the same offers of proof have been made?

Mr. Margolis: Yes, your Honor.

The Court: It will be the same ruling. The objections are overruled.

Does this witness desire to speak privately to the court?

Mr. Margolis: Yes, your Honor.

The Court: Very well. Mr. Steinberg, we will adjourn to chambers.

(Here followed statement by the witness Steinberg to the court in chambers, reported but not transcribed.)

The Court: The same stipulation concerning the presence of the grand jury?

Mr. Goldschein: Yes.

Mr. Margolis: Yes, your Honor.

The Court: The witness, Mr. Steinberg, has made a statement to the court privately and in his statement nothing has been added to the grounds heretofore urged by counsel in objection to the motion of the government to compel him to answer the questions, nor has anything been stated which would [193] tend to exculpate him from answering the questions, nor has anything been stated by the witness which

would show that the answers to them would incriminate or tend to incriminate him.

For that reason, and the reasons heretofore assigned, the witness Steinberg is now ordered and directed to attend the grand jury immediately upon the reconvening and to answer the following questions—will you read them, please?

The Witness: Now, do you know the names of the county officers of the Los Angeles County Communist Party?

The Court: That is the first question.

The Witness: Do you know the table of organization and duties of the officers of the Communist Party of Los Angeles County?

The Court: That is the second question.

Mr. Steinberg, do you understand the order?

Mr. Steinberg: Yes, sir.

The Court: Very well. That disposes of the motions made by the government in connection with the various witnesses.

Is it your desire that the grand jury shall now reconvene?

Mr. Goldschein: Yes, sir. We ask that the witnesses be instructed to appear forthwith before the grand jury that is now convening.

The Court: The grand jury will now reconvene in their [194] quarters provided for them on the sixth floor, and the witnesses are now ordered and directed, and each of them, to appear forthwith in attendance upon the grand jury and to answer the questions heretofore indicated as required.

The witnesses and the spectators will remain in

the courtroom until the grand jury has retired and gone up the elevator. The court will remain in session.

(The grand jury retired from the courtroom at 10:00 o'clock p.m.)

Mr. Goldschein: One other matter before the court recesses. The court, of course, is instructing the witnesses with reference to specific questions?

The Court: That is correct.

Mr. Goldschein: That doesn't limit the grand jury in its investigation at all?

The Court: Nothing is before me concerning the limits of any investigation at all. The only matters that are before me are whether or not these witnesses shall or shall not be required to answer specific questions, and I have ruled on each of those matters.

Is it your desire that the court remain in attendance?

Mr. Goldschein: Yes, may it please the court.

The Court: Until the grand jury recesses for the night?

Mr. Goldschein: Yes, sir.

The Court: Very well. The court is in recess.

(Short recess.) [195]

Los Angeles, California, October 25, 1948, 10:35 o'clock p.m.

The Court: Mr. Goldschein?

Mr. Goldschein: May it please the court, all the ten witnesses have appeared before the grand jury, been recalled and each one categorically refuses to answer the questions as directed by the court, except one witness who did answer the question as to her husband's occupation but refused to answer the other questions directed by the court.

I would like to introduce the court reporter to read the questions asked of each of the witnesses and the answers given.

The Court: The Clerk will call the roll of the grand jury.

(Roll call of the grand jury by the Clerk.)

The Clerk: A quorum is present, your Honor.

The Court: Very well. The reporter will be sworn again.

E. L. DRUMMOND

called as a witness by and in behalf of the government, having been previously duly sworn, was examined and testified as follows:

Mr. McTernan: Your Honor, we have a motion to address to the court. May we do so at this time before the witness is interrogated?

The Court: I did not hear you. [196]

Mr. McTernan: I say, we have a motion to address to your Honor. May we do so at this time before the witness is interrogated?

The Court: What is your motion?

Mr. McTernan: The motion, your Honor, is for a continuance. These witnesses were subpoenaed before daybreak today. They have been consulting with their attorneys or have been in constant attendance upon the grand jury or this court all day. Counsel have been either in consultation with their clients or in attendance upon this court all day. It is now a quarter of 11:00 at night on the same day that these people were subpoenaed before daybreak.

The Court: There is no evidence in the record that they were subpoenaed before daybreak.

Mr. McTernan: We will be glad to put evidence in the record on that subject, your Honor. We have counsel's statement that he began receiving telephone calls from these people beginning sometime around 7:00 o'clock this morning, and these calls dealt with the question of subpoenaes, and that he has been in consultation with them since.

If your Honor wants sworn testimony on that we will be very happy to provide it here in support of our motion, and we request that we be given that opportunity.

The defendants, your Honor, are tired. Counsel are tired. We have never had an opportunity adequately to prepare [197] for this kind of blitzkrieg which the United States Attorney has thrown at these witnesses and counsel today, adequately to represent these people in the proceeding now at which their liberty is at stake. We submit it requires a continuance, not only for time to adequately prepare but in order that counsel and the defendants may be in proper physical condition adequately to present their defense.

I for one, and I am sure that my associates, feel that after being engaged in a matter for something in excess of 15 hours, either in consultation with people under subpoena or in attendance upon the court and grand jury, severely taxes our energies and our abilities as lawyers to do the job for which we have been retained.

We feel we could no more serve our clients or act properly as officers of this court in advising the court on the law, as we see it now, than if we were compelled to go through this for even 15 hours more.

We earnestly submit that these factors alone are sufficient factors to justify the court in continuing this matter.

Moreover, there are a number of things to be introduced into evidence in defense of the charges which now are about to be presented. We have proof that we want to submit in connection with the indictments which have been brought in New York, rulings of the court in those indictments, evidence concerning the Attorney General's statement of intent to bring [198] indictments and cause grand jury investigations to be initiated in Los Angeles.

We have evidence concerning the Attorney General's findings under Executive Order 9835, the stated policy of the Department of Justice concerning the deportation of persons from this country based solely on their membership in the Communist Party.

We have all of the complex evidence which goes into a proper submission of the challenge to the grand jury panel. We have evidence which we wish to submit concerning——

The Court: Counsel, all those matters of evidence were gone into this morning and again this afternoon and this evening, and I passed on the matter that the witnesses here were in no legal position

to introduce evidence or to make those challenges, and a mere repetition of it does not make it any more legal.

Mr. McTernan: These people, we submit, are no longer witnesses, but are defendants charged with an offense against this court, and this offense with which they are charged grows out of the proceedings of the grand jury, which we claim has no basis in law and is invalidly constituted. The entire proceeding upon which these charges rest are a legal nullity. We ask for an opportunity to prove this to your Honor.

We also have evidence which we wish to submit in connection with our claim that there has been in connection with [199] the grand jury proceeding and the charges which are about to be submitted to your Honor, which have been outlined by counsel for the government, denies these defendants the equal protection of the law.

Now for all of these reasons, your Honor, and because we have additional legal matters which we wish to call to your attention, the law respecting the right of organization and free speech under the First Amendment, which was only briefly sketched to your Honor in the proceeding sometime during the 15 hours which preceded the initiation of this proceeding, we wish to call your Honor's attention in detail, and we wish to argue it at considerable length.

Now the authorities are numerous. The exposition of them will be lengthy. We, as I said before, have had little opportunity to prepare for this proceeding which, as I said, began before daybreak this morning with the simultaneous service of subpoenaes on a

large number of people in their homes before they were out of bed.

The law on the privilege against self-incrimination is a complicated subject. The case of Counselman v. Hitchcock, which has been discussed here at length, has been cited at least a hundred times according to Shepard's citator since that decision. We have had no adequate opportunity to examine this law. We have had no adequate opportunity to organize an argument based upon the decisions of the United States Supreme [200] Court.

The Court: Let me see. Cannot the court take judicial notice of matters of common knowledge?

Mr. McTernan: I believe that to be the law generally.

The Court: Is it not a matter of common knowledge that Mr. Margolis and the same firm that is here have represented other people charged with contempts of Congress in connection with the general proceeding as to whether or not they were or ever had been a member of the Communist Party?

Mr. McTernan: Your Honor, in no case that Mr. Margolis has acted, in no case in which our firm has acted, as to which you refer, the alleged contempts of Congress, has it involved the privilege against self-incrimination, which was not claimed.

The Court: Have you—are you suggesting you have not heretofore examined Counselman v. Hitchcock? [201]

Mr. McTernan: I am not suggesting that. I am suggesting that there is considerable law in the courts, only part of which we indicated to your

Honor in argument this afternoon, which show that the position of the government in attempting to limit Counselman v. Hitchcock is not well taken. We are telling you that as lawyers we have not been given an adequate opportunity to prepare the law in this subject since this matter was raised, as we said before, by subpoenaes which were served at the break of day, before people were out of their beds, and we have had so much to do, and we have been in such constant attendance upon either this court or outside the grand jury room advising clients, that we have not had an opportunity adequately to prepare this law, and we think that we are entitled to do that as officers of this court and people representing clients charged with offenses against this court in which they may lose their liberty.

The Court: I do not know that they are charged with a criminal offense.

Mr. McTernan: Whether the offense is criminal or not in nature, your Honor, the fact remains——

The Court: They are not yet charged with anything.

Mr. McTernan: Counsel has just stated to your Honor that they have not answered the questions which the court directed them to answer. I think we can take notice of a matter of common knowledge, that you are about to be asked to [202] confine these people to jail, either for a definite period or until they answer the questions which have been put to them. These people have been routed out of bed, they even haven't had a chance to contact their families during the period that they have been here.

The Court: They have had opportunity to consult counsel, have they not?

Mr. McTernan: They have had an opportunity to consult counsel, yes. I have told you the limitations under which counsel have worked all day. I am sure your Honor will agree that there are few situations in which lawyers are called out of bed to handle cases of this kind.

The Court: It depends on how late they sleep, counsel.

Mr. McTernan: The question, your Honor, is how much opportunity they have had to prepare themselves to research the law and to equip themselves to defend the position in court on which their clients stand the risk of losing their liberties. We submit to your Honor that we have not had such an opportunity.

For all of the reasons that I have stated to you before, we request at this time that your Honor continue this proceeding for a reasonable period to permit counsel to prepare themselves and to permit counsel and the defendants to appear before you at a time when they are fresh and not exhausted by 15 hours of proceeding before this court or before [203] the grand jury.

The Court: Well, now, the proceedings began at 10:00 o'clock this morning.

Mr. McTernan: The 15-hour period, your Honor, I count from the time that they were served with subpoenas and I fix that at approximately 7:00 o'clock, which is the time we received our first call.

The Court: I see. The grand jury proceedings began at 10:00 o'clock this morning?

Mr. McTernan: I don't know. I assume so.

The Court: I think the first appearance in court here was around 10:30 or a quarter of 11:00. I received the matter on my calendar about 11:30 or 25 minutes of 12:00.

Mr. Margolis: I was in Judge Yankwich's court a few minutes after 10:00. I was here at 10:00 o'clock but looking for Judge McCormick and finding out what the situation was, and Judge Yankwich ordered us to wait in his court room at that time, and we waited there for—I don't know exactly how long; I didn't notice the exact period of time—until we came into your Honor's court.

The Court: I see. Have you concluded your statement?

Mr. McTernan: Yes, I have, your Honor.

The Court: Do you wish to be heard, Mr. Goldschein?

Mr. Goldschein: No, I think the court knows the situation. The members of this grand jury have also been here [204] since 9:00 o'clock this morning. They also are away from their homes, their families and their business on the business of the government. They too are tired, just as counsel on the other side are—I am talking about counsel for the government—and I assume the court as well.

I am not going to burden the court with any lengthy argument on this. I think the court knows what the situation is. This grand jury is obstructed by the concerted action of 10 people who answer categorically

in the same way, and we think, may it please the court, in order for the grand jury to continue its business that some reaction is required.

The Court: Is it the desire of the grand jury to proceed this evening?

Foreman Ahlswede: It is, your Honor.

The Court: Very well. The motion to continue is denied.

Proceed.

Direct Examination

By Mr. Goldschein:

- Q. Mr. Drummond, were you in the grand jury room when Henry Steinberg returned to the grand jury to answer the questions as directed to him by the court?

 A. I was.
- Q. Were you present and did you take down the questions that were propounded to him and the answers he made? [205]

A. I did.

The Court: Before you proceed, counsel, I think I'd better also make the statement that in connection with the matter and the hours that the court is keeping, under the rules of this court, with the eight judges, there is a rule of court which requires one judge to handle all criminal matters for a period of four months at a time. It so happens that I have been designated as that judge.

It so happens also that the trials that are set before me begin tomorrow morning at 10:00 o'clock will require the attendance of a jury, a panel, from which a jury will be selected, to be succeeded immediately by another trial. I know of no other judge that is available to hear this matter or to proceed with it.

I know also that the business of the government in connection with other criminal matters, in connection with the convenience of juries, witnesses, defendants, lawyers and other counsel, require me in adherence to my duty to proceed with the trial of those cases tomorrow.

I confess that I would much prefer to be doing other things that be sitting here so late at night. I confess also that I get a little more tired now than I used to 30 years ago.

That is all I have to say.

Mr. McTernan: Your Honor, may I respectfully point this [206] out, that the fact that the court may not have adequate facilities with which otherwise to try these people does not justify or excuse the procedure which we think violates their rights, and the prolonging of this proceeding in this fashion is denying us due process of law.

We wish the record to show that so that our claim will be absolutely clear.

The Court: Very well.

Q. (By Mr. Goldschein): Mr. Drummond, will you please read the questions propounded to the witness and the answers he gave.

The Court: This is the witness?

Mr. Goldschein: Steinberg; Henry Steinberg.

The Witness: Henry Steinberg.

"Q. (By Mr. Goldschein): Mr. Henry Steinberg recalled. Mr. Steinberg, I want to ask you the questions you were asked this morning.

"Mr. Carter: Let us have the reporter read them.

"Mr. Goldschein: All right. Now, Mr. Court Reporter, will you read the question propounded to the witness this morning which the court directed him to answer.

"(Question read as follows:

"'Q. Do you know the names of the county officers of the Los Angeles County Communist Party?"

"The Witness: I refuse to answer, sir, on the ground it may tend to incriminate me.

"Mr. Goldschein: Now read the next question.

"('Q. Do you know the table of organization and duties of the officers of the Communist Party of Los Angeles County?')

"The Witness: I will refuse to answer that question, sir, on the basis it might tend to incriminate me.

- "Q. (By Mr. Goldschein): You recall that the court instructed you to answer those two questions?
- "A. I refuse to answer those questions on the basis that they may incriminate me, sir.
- "Q. I understand, but do you recall that the court directed you to answer those?
 - "A. Yes, sir.
 - "Q. And you still refuse to answer?
- "A. I refuse to answer those questions on the basis they may tend to incriminate me, yes sir.
- "Mr. Goldschein: Step outside and wait there, please."

Mr. Goldschein: Mr. Steinberg is in the court room, I [208] understand. We insist, may it please the court, that this is in direct violation of the instruction of the court and requires some reaction to compel him to answer.

The Court: What is your motion?

Mr. Goldschein: We move that the witness be committed to jail until such time as he answers the question.

The Court: Proceed with the next witness.

Mr. McTernan: Your Honor, with reference to presenting a defense, are we going to hear the motions of government counsel on each of the witnesses before you hear from the defense?

The Court: I think so. I think it will save time. 'Then we will not be too late and everyone will not be too tired.

Mr. McTernan: Don't let my silence be deemed acquiescence.

Mr. Goldschein: May it please the court, may the court reporter read all the questions and answers?

The Court: I think you had better proceed as to each one.

Mr. Goldschein: All right.

Q. What is the next witness that appeared before the grand jury, Mr. Drummond?

A. Margaret Iris Noble.

Q. Will you read the questions propounded to her and the answers she gave, please?

A. "Q. (By Mr. Goldschein): Mrs. Margaret Tris Noble recalled. Mrs. Noble, we will have the court [209] reporter read to you the questions that the court directed you to answer.

"Now, Mr. Reporter, will you read them?

"(Question read as follows:

"('Q. Do you know the names of the county officers of the Los Angeles County Communist Party?')

"The Witness: I refuse to answer that question on the ground that it might incriminate me.

"Q. (By Mr. Goldschein): You recall, Mrs. Noble, that the court directed you to answer that question specifically, do you not? A. Yes.

"Q. Will you answer out so the reporter will hear you?

"A. I refuse to answer that question on the grounds that it may incriminate me.

"Q. Do you recall, Mrs. Noble, that the court just directed you to answer that question?

"A. Yes.

"Q. And you still refuse?

"A. I refuse on the ground that it might incriminate me.

"Mr. Goldschein: Will you read the next question please, Mr. Reporter? [210]

"(Question read as follows:

"('Q. Do you know the table of organization of the Los Angeles County Communist Party?')

"The Witness: I refuse to answer that question on the ground that it might incriminate me.

"Q. (By Mr. Goldschein): Do you recall that the court directed you to answer that question, Mrs. Noble? A. Yes.

- "Q. And you still refuse? A. Yes.
- "Mr. Goldschein: Will you read the next question?
 - "(Question read as follows:
 - "('Q. What is his occupation?')
- "Q. (By Mr. Goldschein): What is your husband's occupation?
- "A. I told you that before. He is a free lance writer.
- "Mr. Goldschein: Eliminate that. Will you read the next question?
 - "(Question read as follows:
 - "('Q. Do you know Mr. Ned Sparks?')
- "The Witness: I refuse to answer that question on the ground that it might incriminate me.
- "Q. (By Mr. Goldschein): You recall that the court instructed you to answer that question?
 - "A. Yes.
 - "Q. And you still refuse?
 - "A. I refuse on the same grounds.
 - "Mr. Goldschein: What is the next question?
 - "(Question read as follows:
 - "('Q. Do you know Mr. Vincent Russo?')
 - "Mr. Goldschein: We will strike that question.
- "Q. Mrs. Noble, you are still refusing to answer all those questions?
 - "A. I refuse on the grounds that I have given.
- "Mr. Goldschein: All right. Will you wait in the anteroom, please, Madam?"
- Mr. Goldschein: We move, may it please the court, that the witness be committed to the cus-

tody of the marshal until she answers these questions.

The Court: Very well. Proceed with the next one.

- Q. (By Mr. Goldschein): Will you read the next, please?
 - A. The next was Wesley Bissey.
- "Q. (By Mr. Goldschein): Mr. Bissey, have a chair, please, sir. Mr. Wesley Bissey recalled. Mr. Court [212] Reporter, will you please read the questions that the court directed Mr. Bissey to answer?
 - "(Question read as follows:
- "('Q. Do you know the names of the county officers of the Los Angeles County Communist Partv?')
- "Q. (By Mr. Goldschein): Will you answer that question, Mr. Bissey?
- "A. I refuse to answer that question on the ground that it will incriminate me.
- "Mr. Goldschein: Will you read the second question, please, sir?
 - "(Question read as follows:
- "(Q. Do you know the table of organization of the Los Angeles County Communist Party?')
- "The Witness: I refuse to answer this question on the ground that it may incriminate me.
- "Mr. Goldschein: Will you read the next question, please, Mr. Reporter?
 - "(Question read as follows:
 - "('Q. Do you know Mr. Ned Sparks?')

"The Witness: I refuse to answer this question on the same grounds.

"(Question read as follows:

"('Q. Do you know Mr. Vincent Russo?')

"Mr. Goldschein: We will eliminate that. [213]

"Q. Mr. Bissey, you recall that the court directed you specifically to answer those three questions?

A. I do.

"Q. And you still persist in your refusal?

"A. I stated my reasons, sir.

"Q. And you won't answer them?

"A. I refuse to answer them on the grounds that they might incriminate me.

"Mr. Goldschein: All right, sir. Will you wait in the anteroom, please?"

Q. Will you read the questions asked of the next witness?

A. The next one is Ben Dobbs.

Mr. Goldschein: Excuse me, Mr. Court Reporter.

Your Honor, I didn't make the motion at the end of the reading of the testimony of the last witness. We respectfully move that the witness be committeed until such time as the questions are answered.

The Court: Very well. Proceed.

Q. (By Mr. Goldschein): Will you read the questions propounded and the answers given by the next witness, please?

A. "Mr. Goldschein: Mr. Ben Dobbs recalled. "Mr. Court Reporter, will you please read the

questions that the court instructed Mr. Dobbs to answer?

- "(Question read as follows:
- "('Q. Do you know the names of the County officers of the Los Angeles County Communist Party?')
- "The Witness: I refuse to answer that question on the ground it may tend to incriminate me.
- "Mr. Goldschein: Mr. Reporter, will you read the next question, please?
 - "(Question read as follows:
- "('Q. Do you know the table of organization of the Los Angeles County Communist Party?')
- "The Witness: I refuse to answer that question on the ground it may incriminate me.
 - "Mr. Goldschein: The next, Mr. Reporter.
 - "(Question read as follows:
 - "('Q. What is your occupation, sir?
 - "('A. I am an organizer.
 - "('Q. For what organization?')
- "The Witness: I refuse to answer that question on the grounds that it may incriminate me.
 - "Mr. Goldschein: Now read the next question.
 - "(Question read as follows:
 - "('Q. Do you know Mr. Ned Sparks?') [215]
- "The Witness: I refuse to answer that question on the same ground.
 - "Mr. Goldschein: Was there another question?
 - "(Question read as follows:
 - "('Q. Do you know Mr. Vincent Russo?')
 - "Mr. Goldschein: We will eliminate Mr. Russo.
 - "Q. Mr. Dobbs, this morning or this afternoon

when you were before this grand jury you were asked the question, 'Do you know Mr. Vincent Russo?' and you claimed your privilege against self-incrimination.

A. I did.

- "Q. You don't know Mr. Vincent Russo, do you? A. No.
- "Q. And you had no basis for claiming the privilege of self-incrimination on that question, did you, because you didn't know Mr. Vincent Russo?
- "A. I refused to answer that question because of the fear it might incriminate me. Now, since then Mr. Russo has been identified to me and I can say I don't know him.
- "Mr. Goldschein: I see. All right. Was there another question that the court instructed the witness to answer, Mr. Court Reporter?

"The Reporter: No. [216]

- "Q. (By Mr. Goldschein): Mr. Dobbs, you recall that the court directed you to answer those questions? A. I do, sir.
- "Q. And you persist in your refusal to answer them? A. I do, sir.
- "Mr. Goldschein: All right, sir. Will you wait in the adjoining room?"

Mr. Goldschein: We move, may it please the court, that the witness be committed until such time as he answers the question.

The Court: Very well. Proceed.

- Q. (By Mr. Goldschein): Mr. Court Reporter, will you please read the questions propounded to the next witness and the answers he gave?
 - A. The next witness is Delphine Murphy Smith.

"Mr. Goldschein: Will you take a chair, please, Madam? Mrs. Delphine Murphy Smith recalled. Will you please, Mr. Court Reporter, read the question put to Mrs. Smith that the court ordered ber to answer?

"(Question read as follows:

"('Q. Do vou know the names of the County Officers [217] of the Los Angeles County Communist Party?')

"Q. (By Mr. Goldschein): Will you answer that question, please, Madam?

"A. No. I still refuse to answer on the same ground.

"Mr. Goldschein: Will you read the next question, Mr. Reporter?

"(Question read as follows:

"(Q. Do you know the table of organization of the Los Angeles Communist Party?')

"The Witness: I still refuse to answer on the same ground.

"Mr. Goldschein: What is the next question? "(Question read as follows:

"('Q. What does your husband do?')

"The Witness: I will answer that question. My husband is a steel worker.

"Q. (By Mr. Goldschein): Then the answer to that question in no way incriminates you, does it? "A No

"Q. And you had no basis for claiming it this morning, did vou?

"A. I refuse to answer that on the basis it may incriminate me.

"Q. I know you did, but you had no basis? [218] "A. No, I refuse to answer your question now.

"Mr. Goldschein: All right. Will you read the next question?

"(Question read as follows:

"('Q. Do you know Mr. Ned Sparks?')

"The Witness: I refuse to answer that question on the ground it might incriminate me.

"Q. (By Mr. Goldschein): Mrs. Smith, you recall that the court directed you specifically to answer those questions? A. Yes, I do.

"Q. And you still persist in your refusal?

"A. I do.

"Mr. Goldschein: All right, Mrs. Smith, will you wait in the anteroom, please?

"The Witness: Yes."

Mr. Goldschein: We move, may it please the court, that the witness be committed until the questions are answered.

Q. Will you read the questions and answers of the next witness, please?

A. The next witness is Miriam Brooks Sherman.

"Mr. Goldschein: Mrs. Miriam Brooks Sherman recalled. Mr. Court Reporter, will you please read to Mrs. Sherman the questions that the court directed that she should answer?

"(Question read as follows:

"('Q. They want to know from you whether or not you know the names of the county officers of the Los Angeles County Communist Party.')

- "Q. (By Mr. Goldschein): Will you answer that question, please, Madam?
- "A. I still refuse to answer on the ground it might incriminate me.
 - "Mr. Goldschein: The next question.
 - "(Question read as follows:
 - "('Q. Do you know Mr. Ned Sparks?')
- "Q. (By Mr. Goldschein): Will you answer that question, Mrs. Sherman?
- "A. I also refuse to answer that question on the same ground.
- "Mr. Goldschein: And the next question, Mr. Court Reporter.
 - "(Question read as follows:
 - "('Q. Are you employed?
 - "('A. Yes, I am employed.
 - "('Q. Where?')
- "The Witness: I refuse to answer that question on the ground it might incriminate me.
- "Mr. Goldschein: Was the witness instructed to answer the question with reference to the table of organization of the Communist Party?
 - "The Reporter: That was not asked.
 - "Mr. Carter: Let me ask one question.
- "Q. Are you presently employed by the federal government?
- "A. I refuse to answer that question on the ground that it may incriminate me.
- "Q. (By Mr. Goldschein): Mrs. Sherman, you recall that the court directed you to return to this grand jury room and answer the questions?
 - "A. Yes, I do.

"Q. And you persist in your refusal?

"A. I do.

"Mr. Goldschein: All right. Will you wait in the anteroom, please?

Mr. Goldschein: We ask, may it please the court, that the witness be committed until she answers the questions?

The Court: Proceed.

Q. (By Mr. Goldschein): The next witness.

A. The next witness was Phillip Bock.

"Mr. Goldschein: Mr. Bock, will you take a chair, please? Mr. Phil Bock recalled.

"Mr. Court Reporter, will you please read to [221] Mr. Bock the questions that the court directed him to answer?

- "(Question read as follows:
- "('Q. Do you know the names of the county officers of the Los Angeles County Communist Party?')
- "Q. (By Mr. Goldschein): Will you answer that question, please, sir?
- "A. I refuse to answer that question on the ground that it may tend to incriminate me.
- "Mr. Goldschein: Will you read the next question?
 - "(Question read as follows:
- "('Q. Do you know the table of organization of the Los Angeles County Communist Party?')
- "Q. (By Mr. Goldschein): Will you answer the question, Mr. Bock?
- "A. I refuse to answer that question on the ground that it might tend to incriminate me.

"Mr. Goldschein: Mr. Reporter, will you please read the next question the court ordered the witpess to answer?

"(Question read as follows:

"('Q. What is your occupation, sir?

"('A. I am an organizer?

"('Q. For whom?') [222]

"Q. (By Mr. Goldschein): Will you answer that question, Mr. Bock?

"A. I refuse to answer that question on the ground that it may tend to incriminate me.

"Q. Mr. Bock, of course you recall that the court directed you just a few minutes ago to answer those questions, do you not?

"A. Yes, sir.

"Q. And you persist in your refusal?

"A. Yes, sir.

"Mr. Goldschein: All right, sir. Will you wait in the anteroom?"

Mr. Goldschein: May it please the court, we move that the witness be committed until such time as the questions are answered.

The Court: Proceed with the next one.

Q. (By Mr. Goldschein): Will you proceed?

A. The next one was Dorothy Baskin Forest.

"Mr. Goldschein: Will you take the chair, please, Mrs. Forest. Mr. Court Reporter, will you please read to Mrs. Forest the two questions the court directed her to answer?

"(Question read as follows:

"('Q. Do you know the names of the county

officers of the Los Angeles County Communist Party?')

- "Q. (By Mr. Goldschein): Will you please answer that question, Mrs. Forest?
- "A. I refuse to answer the question on the ground it might incriminate me.
- "Mr. Goldschein: Mr. Reporter, the next one, please.
 - "(Question read as follows:
- "('Q. Do you know the table of organization and duties of the officers of the Los Angeles County Communist Party?')
- "Q. (By Mr. Goldschein): Will you answer that question, please, Mrs. Forest?
- "A. I refuse to answer that question on the ground it might incriminate me.
- "Q. Mrs. Forest, you recall that the court just a few minutes ago directed specifically to answer those two questions?

 A. I remember.
 - "Q. Won't you please answer them?
- "A. I refuse to answer on the ground that it might incriminate me.
 - "Q. You persist in your refusal?
 - "A. I do. [224]
- "Mr. Goldschein: All right. Will you wait in the next room, please?"
- Mr. Goldschein: May it please the court, we move the witness be committeed until such time as the questions are answered.

The Court: Next witness.

Q. (By Mr. Goldschein): Will you proceed with the next one?

A. The next one is Samuel Harry Kasinowitz. "Mr. Goldschein: Mr. Kasinowitz, will you take the seat there? Samuel Harry Kasinowitz recalled. Mr. Reporter, will you please read to the witness the

questions that court directed him to answer? "(Question read as follows:

- "('Q. Do you know the names of the county officers of the Los Angeles Communist Party?')
- "Q. (By Mr. Goldschein): Will you answer that question, Mr. Kasinowitz?
- "A. No, sir. I will have to refuse to answer that question on the same ground that I refused before, that it might incriminate me.
- "Mr. Goldschein: Will you read the next question, please, sir?
 - "(Question read as follows: [225]
- "('Q. Do you know the table of organization of the Los Angeles County Communist Party?')
 - "The Witness: My answer is the same.
- "Q. (By Mr. Goldschein): Will you answer that?
- "A. I say my answer is the same as to the previous question, that by answering that question I might incriminate myself.
- "Q. Will you answer that question the court reporter read to you?
- "A. I will have to refuse to answer that question on the ground that that, too, might incriminate me.
- "Q. Mr. Kasinowitz, the court just a few minutes ago directed you to answer those questions, do you recall that? A. Yes, sir.

"Mr. Goldschein: All right, sir. Will you wait in the next room?"

The Court: What were those questions, the table of organization and names of the county officers?

The Witness: Yes, your Honor. Two questions.

The Court: Very well.

Mr. Goldschein: May it please the court, we move the witness be committed until such time as the questions are answered. [226]

The Court: Proceed with the next one.

Q. (By Mr. Goldschein): Will you do so, Mr. Reporter?

A. The next witness is Frank Edward Alexander.

"Mr. Goldschein: Will you take a chair, Mr. Alexander? Frank Edward Alexander recalled. Mr. Court Reporter, will you please read the questions that the court ordered Frank Edward Alexander to answer?

"(Question read as follows:

"('Q. Do you know the names of the county officers of the Los Angeles County Communist Party?')

"Q. (By Mr. Goldschein): Will you answer that question, please, sir?

"A. I refuse to answer on the ground that it might incriminate me.

"Mr. Goldschein: Will you read the next question?

"(Question read as follows:

"('Q. Do you know the table of organization

and the duties of the county officers of the Los Angeles County Communist Party?')

- "Q. (By Mr. Goldschein): Will you answer that question, please, sir?
- "A. Likewise I refuse to answer that on the ground that it may incriminate me.
- "Mr. Goldschein: The next question, Mr. Reporter.
 - "The Reporter: That is all.
- "Q. (By Mr. Goldschein): Do you recall that the court just a few minutes ago directed you to answer those questions? A. I do.
- "Q. And you persist and still persist in your refusal to answer those questions?
- "A. On the ground that it might incriminate me.
- "Mr. Goldschein: All right. Will you wait in the next room, please?"

Mr. Goldschein: We move, may it please the court, that the witness be committeed until such time as the questions are answered.

The Court: That is all of the ten witnesses?

The Witness: That is all the witnesses.

The Court: Very well. Do you wish to be heard, Mr. Margolis?

Mr. Margolis: Mr. McTernan has something to say.

Mr. McTernan: Your Honor please, I take it that we have just listened to something in the nature of a presentment. I renew my motion for a continuance on all the grounds stated, and point out to your Honor that it is now approximately [228] 11:15 o'clock.

The Court: 11:10 by this clock.

Mr. McTernan: My watch says 11:15.

The Court: Not that five minutes makes any difference.

Mr. McTernan: At this hour it is de minimis, I would say, your Honor.

I renew my motion on all of the grounds already stated to your Honor.

The Court: The motion for a continuance is denied.

Mr. McTernan: Now, if the court please, on behalf of each of the defendants named in the presentment which has just been read orally, we challenge the grand jury of the District Court of the United States, for the Southern District of California, Central Division, on the following grounds:

The grand jury now sitting in said district and division before whom the defendants have been subpoenaed to appear and have been interrogated——

The Court: Are these different grounds than those heretofore assigned in your written motion?

Mr. McTernan: This is a challenge to the grand jury, your Honor, which will be virtually identical with the challenge heretofore made in another connection.

The Court: If it is the same grounds which have heretofore been reduced to writing, I do not think it will be [229] necessary for you to repeat them.

Mr. McTernan: Very well. The record at this point will incorporate our challenge in full so that our record in this matter will be complete?

The Court: As if they had been read.

Mr. McTernan: Thank you.

The Court: And that is the written motion filed this morning on all the grounds set forth therein; that is, paragraphs 1, 2, 3 and the remainder of the motion.

Mr. McTernan: The challenge to the grand jury, your Honor, is contained in paragraph numbered 1 and the paragraph immediately following which bears no number but not in the paragraphs which bear the numbers 2 and 3.

The Court: Very well. You wish it limited to paragraph numbered 1 and the unnumbered paragraph following it but preceding 2?

Mr. McTernan: Yes. The challenge to the grand jury panel, your Honor, is set forth in paragraph numbered 1 and the paragraph which immediately tollows.

First I will make that challenge and ask you for an opportunity to call witnesses. The first witness will be the jury commissioner for the District Court.

The Court: The challenge is overruled on the basis of my ruling this morning, that the witness has no legal standing to challenge the composition of the grand jury before [230] whom he is called.

Mr. McTernan: We now move to dismiss the proceedings on the grounds set forth in paragraphs numbered 2 and 3 of the motion.

The Court: And which may be incorporated in the record without repeating them have verba at this time.

Mr. McTernan: Thank you.

Now in this connection, your Honor, I would like to point out a few facts which stand out rather plainly from the record that has been adduced over the hours today. It is illustrated, in a sense, by the phony Vincent Russo question that so much was made of this afternoon and which has been politely dropped before the grand jury this afternoon, or this evening, rather. This Special Assistant to the United States Attorney General was not seeking information, nor was the grand jury seeking information, concerning the defendant's knowledge of Vincent Russo. They were engaging in a gentle cat-and-mouse game with these defendants in order to trap them into something which might somehow abridge their constitutional rights or destroy the basis upon which they might claim them. And in every instance where the Vincent Russo guestion, which your Honor was forced to hear earlier this evening and this afternoon, and which your Honor was required through the motions made by the Special Assistant to the Attorney General to issue orders on, have now been abandoned, [231] and we submit that this illustrates the purpose of this whole proceeding before the grand jury.

These Attorney Generals and United States Attorneys and this grand jury which sits here and insists that this matter be heard tonight, regardless of whether or not these people have been ade-

quately represented, are not seeking information, your Honor. This is a political attack, and this is an attack upon the Communist Party of Los Angeles County, which is part of the nationwide attack which these gentlemen, through their boss, Tom Clark, had announced some years ago and which they are carrying out step by step.

We say that people of this country, under the Constitution and particularly the First Amendment, have a right to their political views, and they have a right to speak these political views, and they have a right to organize into their political views, and it has been recognized by the courts of this land that the right of organization, of assembly and association or affiliation, is one of the primary methods by which speech today can be made effective.

This is a right which has been recognized by one Federal judge, Judge Swaggert, in a district in the middle west—I am sorry I don't have the citation; this is one of the things that counsel haven't been able to do because of the rush of things—but this case involved an attack by the police, who were also claiming that they were seeking information on [232] union meetings were were held privately in homes, and one of the things which the police said that they were trying to assert by virtue of these raids was the names of people who belonged to the organization, because some possible illegality might be involved.

The court, by injunction, restrained the police from this kind of interference with the right of organization because, the court said, that this was one of the fundamental rights which was guaranteed by our First Amendment and that the right to organize and the right to belong to organizations through a program, political or social in nature, could be effectuated or spoken about, that this right was a right which could be exercised privately as well as publicly, that people didn't have to join—

The Court: I notice counsel paying some attention to some uniformed officers who came in. I see a great many more people here this evening than this afternoon. This is a public hearing and anybody has a right to come in.

Mr. McTernan: Yes. My attention was directed to them—they came in behind me—by your Honor's attention to them, and so I turned around to find out what was happening. The clanking of chains always attracts my attention.

The Court: I heard no chains.

Mr. McTernan: I heard metal clanking. It sounded like chains to me. [233]

The Court: Do any of the officers who came in the room have any chains?

An Officer: No, sir. We do not, your Honor.

The Court: Very well.

Let us pursue that. I do not like to leave that implication in the record, that this court here is dangling some chains over counsel's head or otherwise.

Mr. McTernan: No, your Honor. I had no such intention in mind. I had no such implication in mind.

The Court: Did you or did you not hear any clanking of chains?

Mr. McTernan: I heard, as I said, a clanking of metal which I said sounded like chains. I didn't know the court had anything to do with the presence of these individuals.

The Court: I have nothing to do with the presence of those individuals, counsel, and I resent your implication and I think it is highly improper. I just stated that this is a public hearing and anyone has a right to come in here who desires it. My point is that you have stated for the purposes of the record and in the record that you heard a noise like the clanking of chains.

Mr. McTernan: Yes, I did say that, but I didn't attribute it to the court or connect the court with it in any way and I didn't intend to do so.

The Court: What was the noise you heard?

Mr. McTernan: I heard the clanking of metal which I [234] said sounded like chains to me. I thought I saw, as I turned around—each of them were walking towards the rear of the room—that they had handcuffs strapped to their uniforms. Perhaps it was that noise or perhaps it was some other kind of metal, but I want it clear in the record that I have made no charge against the court, either directly or indirectly, with reference to the appearance of the uniformed officers in court.

The Court: Very well.

Mr. McTernan: I was saying, at the time they entered, the court held in this case, decided by Judge Swaggert, that citizens of this country under

the First Amendment do have the right to organize privately, to assemble privately, and not to be held to account for it by investigations of law enforcement officers, and that this is a right——

The Court: Those were investigations that were made in their homes? Were they subpoenaed before a grand jury?

Mr. McTernan: No, they were not subpoenaed before a grand jury.

The Court: I think the distinction ends there, counsel.

Mr. McTernan: I am sorry that I can't agree with you, your Honor. The principle as to the right of people to be secure in the privacy of their beliefs and their associations extends to them wherever they go.

This is a right which attaches to the fact that they are [235] under the jurisdiction of the United States and that the First Amendment applies to them, and it doesn't make any difference whether they are in their homes or in the grand jury room. The right to be private in this sphere protects them wherever they are, and this is the point in the case and it is the point of my argument.

The Court: Very well.

Mr. McTernan: Similarly, and again I do not have the precise citation, but I would like an opportunity to supply it to you, a decision by the highest court of Massachusetts in Bow v. Secretary of the Commonwealth, in which this right of association and organization again was asserted and recognized by the court as the rights of citi-

zens to be free of being held to account by investigations of law-enforcement officers and other agents of government—this right was asserted and defended and recognized by the court.

The importance of it, your Honor, is that this is the way in which today people can speak.

The Court: Let me see. You are not arguing now that they would be incriminated if they answered these questions?

Mr. McTernan: This is not the point I am addressing myself to.

The Court: You are arguing now that in any event the government has not the right to ask these questions?

Mr. McTernan: That is correct. And that this point is [236] as important to the guarantees of free speech and the First Amendment to the Constitution as the rights of the book publisher to be free of prior censorship, such as announced in the case of Near v. Minnesota, or the right of people to speak through picketing, such as was recognized in Thornhill v. Alabama, the right of people to issue leaflets, to gather in meetings, to do this speaking in the various ways, sound trucks, radio, and so forth, that have been recognized by our courts as agencies or instrumentalities of speech. And that this right, too, the right to organize into political parties, into organizations around the issues of the day, is a right that is inextricably intertwined with the right of free speech, and that unless people can be free in the exercise of this right, particularly free of inquisition by law-enforcement officers and grand juries, the right is as nothing.

The Court: The witnesses did not advance any of those reasons as a ground for refusing to answer the questions. The witnesses only advanced the argument that they refused to answer on the ground that they might incriminate themselves.

Mr. McTernan: That is correct, but in defending them we are raising the power of the government to ask the questions which, if the government did not have the power to ask the questions, we assert that they cannot be adjudged in contempt because if there was no power to ask then there is no [237] power in the court to compel an answer, and there is therefore no power in the court to punish for failure to answer when the court's command has been given.

I want to discuss this in the historical context and terms of the attack on the Communist Party. First I want to point out that these questions which have been put here amply support our view that this is the kind of political attack which we claim it is, and that the right of free speech and free organization has been attacked, that that is the thing which is really under attack. These people, singularly enough, ten of them, are called here and identical questions are put to each. What are the names of the officers? What is the table of organization, whatever that may mean?

The Court: No, they were not asked that.

Mr. McTernan: Do you know the table of organization?

The Court: That is right.

Mr. McTernan: And do you know Ned Sparks, whom we have tried to show earlier, and will repeat our offer to prove as this hearing progresses, is reputed in this community to be an officer of the Los Angeles County Communist Party.

Now these questions on their face, your Honor, I submit are questions which bespeak an attack upon an organization. These grand juries are supposed to be here investigating the commission of crime with a view to bringing a true bill, and this, as I understand it, is their only function. [238]

These witnesses are asked not any specific unlawful acts; they are asked to identify officers, they are asked to identify organizational charts—I assume the table of organization means something like that—they are asked to identify one of the officers of the Communist Party. This is an attack upon the Communist Party. This is an effort to engage in a tactic which was advertised by the superior of these gentlemen, Mr. Tom Clark, the Attorney General, the government tactic of attacking Communists by exposure.

The members of Mr. Tom Clark's party don't have to stand up and be counted, and the members of Mr. Dewey's party don't have to stand up and be counted, but for some reason the members of the Communist Party have to stand up and be counted, to use the colloquialism, and this is the government's tactic, and this is the government's purpose, and so we will go around the country, Special Assistants to the Attorney General, and

get loyalty checks, first Denver, then Cleveland, then Los Angeles—Los Angeles was announced by Mr. Clark—going around making the Communists stand up and be counted, and the first Communists to stand up and be counted will be the officers and the people whose names fill in the organizational chart.

Why? Because Tom Clark announced quite some time ago to Congress, he advised Congress, don't outlaw this party, he said, that would be unconstitutional, that would be a bill of [239] containment, but let us make them stand up and be counted. Let us use the weapon of exposure.

And so in an effort to stifle political expression in this country, in an effort to drive people underground, to force them out of their political views, to put a penalty on the expression of their political views, the government is engaging in this political purpose of suppressing a political party by this tactic of exposure.

And how have they done it. They have built up this very well in the community, that being a Communist is to be a Pariah, that if you belong to this particular political party you are a social outcast, you can't work for the government, private blacklists are encouraged by legislative committees, if not by executive officers, people in the executive branch of the government, the FBI and other branches of the Department of Justice encourages the private employment blacklists by its activity in private industry throughout the country, and so it having been created in the public

mind that to be a member of the Communist Party is to be a Pariah, is to be someone who is no longer entitled to earn a living, no longer entitled to have a family—and we have in the Denver situation, for example, members of this very office standing up before the Federal Court there and saying that people who are communists and have families should have their families taken away from them so that they can go to jail for standing on [240] their constitutional rights, people who are Communists should have their families taken away from them because they are Communists—this is the purpose of this investigation, your Honor, and this purpose is to deprive people who may be connected with this organization in any way of the right of free speech, of the right of-

The Court: Mr. McTernan, the tenor of your argument is that the answers to this question will not incriminate these people, if I understand your argument correctly now.

Mr. McTernan: Well, your Honor, we tried to make this very clear this afternoon, and while I am not addressing myself now to the self-incrimination point, I would like to address myself to your Honor's question, because it does underlie much of our defense.

It is our position that people in this country have a right to belong to the Communist Party, and that the Communist Party is a lawful party. These gentlemen will echo this. But, on the other hand, what are they doing? This investigating agency is engaging in a private blacklist. Their

bosses are denouncing the Communist Party as a subversive and unlawful organization under the executive order, so that people cannot belong to the Communist Party and be employed by government. They are bringing indictments in New York against people solely on the basis that they belong to the Communist Party, and they are complaining, and they assert in their indictments, [241] that the Communist Party is an organization devoted to purposes which violate the Smith Act.

Now we say, your Honor, that the government should be on one side of this thing or the other, but in this kind of a proceeding it is attempting to be on both sides. It wants to be free in New York to indict people solely because they are members of the Communist Party, and it wants to be free here to expose people who are members of the Communist Party, with all of the social and economic limitations which that implies and carries with it, and blandly assert to the court, why there is nothing unlawful in being a member of the Communist Party, there is no statute which says the Communist Party is unlawful.

This is a completely inconsistent and intellectually dishonest position, your Honor. These people should take one position or the other. If the Communist Party is an organization which advocates or has for its purposes the things outlawed by the Smith Act, then membership in the Communist Party, as the Smith Act says, is a crime. And then any question which tends to connect a wit-

ness with that party would tend to incriminate him.

If, on the other hand, the Communist Party is not dedicated to those unlawful purposes, it is not an organization which violates the Smith Act, then membership in it is not a crime and then these questions concerning membership would [242] not tend to incriminate them.

But, your Honor, the government is taking half of one position and half of the other, and they are inconsistent, and they don't stand together.

Now, there is nothing inconsistent in what we are saying. What we are saying is that people have a right properly to belong to this organization, to engage in its activities, and they commit no crime.

We also say that when the government charges them with crime, as administrative findings of criminal activity, prosecutes people for membership in this organization, then there is a reasonable likelihood, if I may use the language of the court in the Counselman case and the Weisman case, the Cantor case, and numerous others, of penalty and danger to follow from giving any answer which would connect them with that.

Now we have gotten somewhat away from the point that I began on with reference to the political purpose of this grand jury investigation. The fact that it is an unlawful purpose, a purpose which invalidates the very act and which therefore renders their action here today a nullity, and which disables either the law-enforcement officers from

presenting to this court charges upon which they may be convicted and deprived of their liberty, and gives the court no jurisdiction to punish them or otherwise penalize them for not having answered the questions which they are charged with not having [243] answered.

Now part and parcel of that is also the equal protection point, which I have mentioned to your Honor earlier. This design on the part of the lawenforcement agency, we assert, is not simply an accidental, fortuitous circumstance that some people are prosecuted and other people are not. What we are saying, your Honor, is that there is a deliberate plan, an intentional drive on the part of the lawenforcement officers, the Department of Justice, to use the majesty of the law, the authority of this court, the grand jury, against one political party only, against one form of political expression only, and that only because the people happen to be holding their office and misusing it in this respect disagree with the political views and the organizational objectives of this party.

This is not a claim that the law is being enforced only partially, this is not a claim that you didn't prosecute or you didn't ask John Doe these questions, so why do you ask me, it is not that kind of situation at all, or that there are ten murderers who go free for every one that is charged with crime. That is not our point. Our point is that this is a systematic plan for breaking up the Communist Party by virtue of the device of grand jury hearings trying to indulge in the technique which

the Attorney General himself has announced, the technique of exposure, the technique of making Pariahs out of people, all to stifle political expression.

For these reasons, and for the reason stated in connection with the grand jury panel, we urge that these proceedings be dismissed.

In connection with our point of self-incrimination, your Honor, we wish to develop a record which is the same as the record which was developed some hours ago in connection with the motions at that time that your Honor direct these defendants, who were then witnesses, to answer. I don't want to repeat it if it is not necessary.

The Court: Your motion is to make a part of the record in connection with this proceeding all of the objections and grounds and reasons which you urged at that time?

Mr. McTernan: All of the evidence, your Honor, and all of the stipulations and all of the offers of proof.

The Court: They may be deemed to have been offered at this time with the same force and effect as if they were here repeated hace verba.

Mr. McTernan: Thank you.

Now I do not wish to argue extensively the cases on self-incrimination. I would like to say a few words about them in order to complete the record.

The Court: What are the cases?

Mr. McTernan: The cases are Counselman v. Hitchcock.

The Court: I think that has been developed enough. [245]

Mr. McTernan: I didn't intend, when your Honor interrupted me, to discuss cases specifically. I simply wanted to give an overall summary with reference to them which I think will set the basic theme of our point on self-incrimination, and it will take me only a few minutes.

The Court: Is it any different than the basic theme which was developed and stated repeatedly this afternoon by Mr. Margolis and I think was several times stated by you?

Mr. McTernan: I think that the thing that has to be emphasized, your Honor, is the fact that the questions cannot be viewed standing alone, and this I think is the problem which we find in presenting it to your Honor and also in the argument.

The Court: I think you made that point this afternoon, and you offered in evidence the indictment in the Foster case and the other cases, and the general attitude which you said was expressed by the Attorney General. I understand your point.

Mr. McTernan: In other words, that the questions have to be considered in the light of the setting, which includes the New York indictment, the statements of the Attorney General, and——

The Court: I understand your point thoroughly, and I gave consideration to it and ruled upon it this afternoon.

Mr. McTernan: Yes. What we claim is the twofaced [246] position of the Department of Justice, in one case saying that membership is a crime and in an other case saying it isn't a crime, simply because there is no statute specifically so providing.

Now in connection with the presentation of the defendants, apart from the motion to dismiss, I would like to call your Honor's attention to the fact that we urge that the asking of these questions is beyond the power of the grand jury and the command of the court to answer or the punishment of witnesses for not having answered is beyond the jurisdiction of the court because it infringes the rights of these people under the First Amendment of the Constitution of the United States.

The Court: I think you have developed that point. You have spent about 20 minutes on that First Amendment just a little while ago.

Mr. McTernan: I offered it, your Honor, in connection with a motion to dismiss.

I also want to be sure that there is no technical distinction between what I offer in support of a motion to dismiss and what I offer in connection with what might be properly called the merits of the matter, and I want to be sure that that point is considered.

The Court: It may be deemed that everything you have said in connection with the proceeding shall be taken in support [247] of whatever you may call a motion to dismiss or on the merits or for a continuance, or whatever else you may desire to designate it. They have all been considered as general objections to the proceedings and now as general

eral objections to the motion of counsel for the government.

Mr. McTernan: Yes.

Now in the course of that argument, your Honor, I made reference to a number of facts. We obviously at this hour of night will be unable to prove the facts which were asserted in my argument.

The Court: You made an offer of proof.

Mr. McTernan: The offer of proof which I made did not include those facts, and what I would like to do, in order to shorten the time, is to have the references to facts, such as the position and policy of the Attorney General, and so forth, stand also in connection with this motion.

The Court: That was also included in the offer of proof and I have just made an order that it may be deemed to be part of this record.

Mr. McTernan: Your Honor, I don't want to belabor the point. There is a difference. Some of the things which I said on the argument were not contained in the offer of proof made this afternoon, and may the statements which I made during the argument stand as offers of proof of those facts?

The Court: They may so stand, and are rejected. [248]

Mr. McTernan: May I be excused for just a moment to confer with counsel?

The Court: Surely.

(Conference between defense counsel.)

Mr. McTernan: Your Honor, may this record also include the statements which were made pri-

vately in chambers to you by each of the defendants at the time they were before you?

The Court: As private statements?

Mr. McTernan: Yes, your Honor.

The Court: You offer them now as private statements or as public statements?

Mr. McTernan: No, as private statements. We ask you to consider them in this connection in the same way that you considered them in chambers.

The Court: Very well. Those statements were private statements made to the court and will be deemed to be such, unless and until the defendants themselves desire to disclose them.

Mr. McTernan: Yes. [249]

Now I have just one simple point to make in closing.

* * * *

Mr. Goldschein: It is a peculiar coincidence, if it is a coincidence, that of ten clients of Mr. McTernan's, the last five of which are asked questions that they don't know the answers to, namely, do you know Mr. Vincent Russo, and all five that are asked that question categorically say, "I refuse to answer on the ground that it may tend to incriminate me." That is a most unusual happening for five people picked at random and asked the same question, all five of whom are advised by the same lawyer. And they talk about a mousetrap.

The right to political views has been discussed here at length, and yet the political views of none of these witnesses have been asked by the grand jury. No witness before that grand jury has been asked his political views. And yet the courts have held that there isn't any reason why you can't ask the political views of a witness before the grand jury in any kind of an investigation that it is pertinent to.

Why, may it please the court, a case right in point on that question, and in point of time as well, is the case of Abrams v. United States in 64 F. (2d).

The Court: I do not think that they have been asked their political views.

Mr. Goldschein: That is right.

The Court: So I do not care to hear any authority on that subject.

Mr. Goldschein: I was only relating it for the coincidence in connection with it.

The Court: I see.

Mr. Goldschein: The question in that case was Thomas E. Dewey, and the question that he asked the witness was, "Are you a Democrat captain in some particular ward or district," and the witness refused to answer, and the question went up, and they held that the question was a proper one.

I merely cite that because of the coincidence in connection with the particular question on politics.

I have examined the cases at great length over some time and I know of no court at any time that has gone further to protect the constitutional rights of the witnesses who appeared [252] before this grand jury than this court has done. I know of no court, I know of no district, where the court categorically took each witness in his chambers to let that witness tell him privately, out of the hearing of either counsel, what that statement is, what the

answer is that would tend to incriminate him for the violation of a Federal offense, and in this court tonight ten witnesses were categorically, one after the other, taken in chambers.

They talk about constitutional rights. At no time did they ever talk of the rights of the grand jury whose duty it is to protect the community against law violators, and the right of the grand jury to make inquisitorial investigations.

Now I think during the course of the evening we have expressed our views. I think the right of the Attorney General to order these investigations is a proper one, the right to enforce the laws of this country is a duty, and we expect to carry on just as we have in the past.

The Court: Is it your position that this is a civil contempt or a criminal contempt?

Mr. Goldschein: The contempt will be determined by the action of the court. The plea of the government is that these people be confined in jail until they answer the questions before the grand jury.

The Court: I understand your position.

Mr. Goldschein: It is civil contempt. [253]

Mr. McTernan: Your Honor, we can't agree with the position of counsel on that subject. Again we speak at a great disadvantage. It wasn't until somewhere around 11:00 o'clock tonight, and it is only about an hour ago, that we knew that the government was going to ask this court to commit these people, who were routed out of bed by these subpoenaes this morning.

The Court: Counsel, if you have a new point let

us get to the new point, but let us not keep repeating routing out of bed, what you have learned today, and that you have worked hard. We have all worked hard, and we realize that you are entitled to have an opportunity to represent your clients and to present your points. This court has taxed its strength and its time as much as anyone else, but please do not repeat yourself. If you have a new point to argue, will you argue your new point.

* * * *

Mr. McTernan: Now either these people are shooting towards a crime connected with the membership in the Communist Party, or they are just engaging in a cat-and-mouse game, they are just playing around with this sort of thing, your Honor, and misusing the processes of this court.

The Court: Counsel, have you a new point? You made all those points before.

Mr. McTernan: I think this is a new point.

The Court: That is not new. You have made that statement before. If you have a new point, let us hear it.

Mr. McTernan: I have a point, but if your Honor doesn't want me to finish it——

The Court: What is your point, without repetition of all of the things or various things you have said heretofore?

* * * *

The Court: Very well. Is everybody through offering points and suggestions now? (No response.)

Are you ready for the ruling?

Mr. Goldschein: Ready for the ruling, sir.

Mr. Margolis: Yes, your Honor.

The Court: As your name is called, will you please come forward and stand back of the bar here.

Mrs. Noble.

Mr. Bissey.

Mr. Dobbs.

Mrs. Smith.

Mrs. Sherman.

Mr. Bock.

Mr. Kasinowitz.

Mrs. Forest.

Mr. Alexander.

And Mr. Steinberg.

Mrs. Noble, it is the judgment of the court that you are found guilty of contempt of this court for refusal to obey a lawful order of the court, to wit, a direction to you to answer three questions which were put to you before the grand jury. Those three questions were: Do you know the names of the county officers of the Los Angeles County Communist Party? Do you know the table of organization and duties of the Los Angeles County Communist Party? And do you know Ned Sparks?

It is the judgment and sentence of the court that you be committed to the custody of the Attorney General, acting through the United States Marshal, until such time as you shall answer these questions, and you shall forthwith be committed.

Mr. Bissey, it is the judgment of the court that you are found guilty of contempt of this court for failure to answer a lawful order, namely, an order heretofore made directing you to answer two questions before the grand jury, to wit: Do you know the names of the county officers of the Los Angeles County Communist Party? Do you know the table of organization [259] and duties of the Los Angeles County Communist Party?

It is the sentence of the court on that judgment that you be committed to the custody of the Attorney General until such time as you shall answer those questions.

Mr. Dobbs, it is the judgment of the court that you are found guilty of contempt of this court for failure to answer a lawful order thereof, to wit, the order of the court heretofore made upon you to answer four questions put to you by the attorneys for the government before the grand jury. Those four questions are: Do you know the names of the county officers of the Los Angeles County Communist Party? Do you know the table of organization and duties of the Los Angeles County Communist Party? Do you know Ned Sparks? And for whom are you an organizer?

It is the sentence of this court on that judgment that you be committed to the custody of the Attorney General until you shall answer those questions, and you will stand forthwith committed.

Mrs. Smith, it is the judgment of this court that you are found guilty of contempt of this court for failure to obey a lawful order thereof, to wit, the order of this court heretofore made directing you to answer two questions before the grand jury, namely: Do you know the names of the county offi-

cers of the Los Angeles County Communist Party? Do you know Ned Sparks? [260]

For this contempt it is the sentence of the court on that judgment that you be committed to the custody of the Attorney General and forthwith committed to the custody of the marshal until you shall answer those questions.

Mrs. Sherman, it is the judgment of the court that you are guilty of contempt for failure and refusal to obey a lawful order of this court, to wit, an order directed to you to answer four questions before the grand jury, those questions being: Do you know the names of the county officers of the Los Angeles County Communist Party? Do you know the table of organization and duties of the Los nAgeles County Communist Party? Do you know Ned Sparks? And by whom are you employed?

It is the sentence of the court on that judgment that you stand committed to the custody of the Attorney General until you shall answer those questions, and you will be forthwith and are now committed.

Mr. Bock, it is the judgment of the court that you are guilty of contempt of the processes of this court for your refusal and failure to obey a lawful order thereof, to wit, the order directed to you to answer three questions put to you before the grand jury, to wit: Do you know the names of the county officers of the Los Angeles County Communist Party? Do you know the table of organization and duties of the Los Angeles County Communist Party? For whom are you an organizer? [261]

For this contempt it is the sentence of the court on that judgment that you shall stand forthwith committed to the custody of the Attorney General until you shall answer those questions. The defendant will stand committed in the custody of the marshal.

Mr. Kasinowitz, it is the judgment of the court that you are found guilty of a contempt of this court for failure and refusal to obey a lawful order of this court, to wit, an order of this court directed to you to answer two questions pending before the grand jury, which questions are: Do you know the names of the county officers of the Los Angeles County Communist Party? Do you know the table of organization and duties of the Los Angeles County Communist Party?

It is the sentence of the court on that judgment that you stand committed to the custody of the Attorney General until you shall answer those questions, and you shall be forthwith and are committed.

Mrs. Forest, it is the judgment of the court that you are guilty of contempt of the processes of this court for failure and refusal to obey a lawful order of this court, to wit, an order of this court directing you to answer two questions before the grand jury, namely: Do you know the names of the county officers of the Los Angeles County Communist Party? Do you know the table of organization and duties of the Los Angeles County Communist Party? [262]

It is the sentence of the court on that judgment

that you stand forthwith committed to the custody of the Attorney General until you shall answer those questions. You will stand committed.

Mr. Alexander, it is the judgment of this court that you are guilty of a contempt thereof in that you have refused to obey a lawful order of this court, namely, an order directing you to answer two questions before the grand jury, those questions being: Do you know the names of the county officers of the Los Angeles County Communist Party? Do you know the table of organization and duties of the Los Angeles County Communist Party?

It is the sentence of the court on that judgment that you stand committed to the custody of the Attorney General until you shall answer those questions and you will be forthwith committed.

Mr. Steinberg, it is the judgment of the court that you are guilty of a contempt of this court in that you have failed and refused to obey a lawful order of this court, namely, an order directing you to answer two questions before the grand jury, which questions are: Do you know the names of the county officers of the Los Angeles County Communist Party? Do you know the table of organization and duties of the Los Angeles County Communist Party?

It is the sentence of the court on that judgment that [263] you stand committed to the custody of the Attorney General until you shall answer those questions, and will will stand forthwith committed.

Mr. McTernan: Your Honor, may I direct two matters to your attention? Two of the ladies whom you have ordered committed are mothers of chil-

dren. Mrs. Forest is the mother of a 4-year-old child. Her husband is working outside of Los Angeles a considerable distance, and she needs time to make arrangements for the care of that child.

Mrs. Sherman is the mother of two children, one 12 years old and the other 4 years old. Her husband is living with her, but has to work in order to meet the family budget, and she needs time also to arrange for her children's care.

The Court: Is there any objection to the stay of execution to Mrs. Sherman and Mrs. Forest for 24 hours?

Mr. Goldschein: None, your Honor.

The Court: Very well. The execution of the sentence as to Mrs. Forest and Mrs. Sherman will be stayed until Wednesday, October 27th, at 12:00 o'clock noen. The other defendants will stand committed and forthwith taken into custody of the marshal. [264]

REPORTER'S TRANSCRIPT OF WITNESSES' STATEMENTS TO COURT IN CHAMBERS

Los Angeles, California October 25, 1948

STATEMENT OF WITNESS MARGARET IRIS NOBLE

(The following proceedings were had in chambers, as follows:)

The Court: The record will show that we have recessed to chambers and that there is present Mr. Hayden, the bailiff, Mr. Horn, the Clerk, and

the court reporter, Mr. Wahlberg, and Mrs. Noble, the witness.

Now do you desire to make a statement?

Mrs. Noble: Yes. I want to make a statement that the reasons I refuse to answer the questions in the grand jury room were because I felt that the answer to those questions would tend to link me up with the Communist Party, which is a party which the Attorney General has declared to be a party of force and violence.

The Court: Is there any other statement that you wish to make? If so, I will hear it. Is that the only reason you have?

Mrs. Noble: Yes.

The Court: That is not sufficient. It is no explanation. We will resume in open court. [3]

* * * *

STATEMENT OF WESLEY BISSEY

(The following proceedings were had in chambers, as follows:)

The Court: The record will show that Mr. Bissey, the witness, is here, the Clerk, Mr. Horn, Mr. Wahlberg, the reporter, and Mr. Hayden, the bailiff.

Mr. Bissey, you heard your counsel's statement that you desire to make a statement privately to the court in support of your contention that the answer to these questions might incriminate you?

Mr. Bissey: Yes, sir.

The Court: I will hear now the statement you desire to make.

Mr. Bissey: Well, your Honor, I feel that answering these questions might tend to link me with an organization which the government seems to believe is committed to the violence and overthrow of our existing government.

The Court: Those are the grounds which your counsel has urged. Do you have some other ground other than that which has been urged in open court here, I mean something that is personal to you? If you do, I will hear it, something you would not care to state openly.

Mr. Bissey: Well, your Honor, I agree whole-heartedly with the position of my counsel in this respect. It appears to me, on the basis of things that have happened in the recent [4] past, that it is quite apparent that these questions are for the purpose of linking me with an organization that the government's position seems to think is committed to force and violence. This being true, I personally believe that answering these questions would tend to incriminate me, excepting the question in relation to the one gentleman, whose name I don't recall just now.

The Court: Mr. Russo?

Mr. Bissey: Mr. Russo, as was pointed out.

The Court: You are willing to answer that question?

Mr. Bissey: Well, it was only in the development of the discussion in your courtroom that I learned that Mr. Russo was sitting at the table there.

The Court: Do you have any other statement to make?

Mr. Bissey: No, sir.

The Court: Very well. We will resume in open court.

* * * *

STATEMENT OF WITNESS BEN DOBBS

(The following proceedings were had in chambers, as follows:)

The Court: Let the record show that there are present the witness, Mr. Dobbs; Mr. Horn, the Clerk; Mr. Wahlberg, the reporter, and Mr. Hayden, the Bailiff.

Mr. Dobbs, in the statement you made to your counsel I [5] understand that you desire to make a statement to the court at this time as to any additional reasons other than those assigned by your counsel as to why the answer to the questions might incriminate you, and I have asked you in here for that purpose in order to give you that opportunity.

Mr. Dobbs: I have no additional reasons. I would like to make a statement, sir.

The Court: Very well.

Mr. Dobbs: I can't think of any additional reasons but I would like to make a statement.

The Court: Yes?

Mr. Dobbs: I refuse to answer the questions on the ground that it would incriminate me because of the position of the government that the Communist Party is advocating the overthrow of the United States government by force and violence. To answer the questions, the evidence might link me to that organization and at the same time link me knowingly to an organization that the government claims advocates the overthrow by force and violence, especially in terms of answering what organization I organize for.

The Court: You do not care to elaborate on that statement?

Mr. Dobbs: No, sir.

The Court: Now is your opportunity to make any private statement to me that you wish to make which you would not [6] care to have other persons hear.

Mr. Dobbs: No, sir. I think it answers the same question, that is, I have nothing to say to the court that I wouldn't say elsewhere.

The Court: No other personal reasons?

Mr. Dobbs: No, sir.
The Court: Very well.

* * * *

STATEMENT OF WITNESS DELPHINE MURPHY SMITH

(The following proceedings were had in chambers, as follows:)

The Court: The record will show that the witness Mrs. Smith is here, with Mr. Hayden, the bailiff; Mr. Horn, the Clerk, and Mr. Wahlberg, the reporter.

Mrs. Smith, we have adjourned the court to chambers here in order that you may make any statement that you desire privately to the court in justification of your excuse or in explanation of your refusal to answer the questions.

200

Mrs. Smith: Yes.

The Court: And I am now affording you that opportunity. Do you wish to make a statement?

Mrs. Smith: Well, if I were to answer that question about who I know, etc., it would tend to put me in the position of possibly being connected with an organization that the [7] United States government, officers of the United States government, claims or seems to think advocates the overthrow of the government by force and violence. That was why I refused to answer.

The Court: Do you have any other statement to make? If you do, now is the opportunity, I mean any statement of reasons which are purely personal to you?

Mrs. Smith: No, I don't believe so.

The Court: This statement is to the court in private.

Mrs. Smith: I don't believe so.

The Court: You do not have any other statement to offer?

Mrs. Smith: No.

The Court: Very well. We will reconvene in the courtroom.

* * * *

STATEMENT OF WITNESS MIRIAM BROOKS SHERMAN

(The following proceedings were had in chambers, as follows:)

The Court: This witness is—

Mrs. Sherman: Sherman, Mrs. Sherman.

The Court: Let the record show that there is

present Mrs. Sherman, the witness; Mr. Horn, the Clerk; Mr. Wahlberg, the reporter, and Mr. Hayden, the bailiff. [8]

Mrs. Sherman, we have adjourned to chambers here in order that you may make any statement that you desire in addition to that which your counsel has made and which has been urged in open court which you may wish the court to know in connection with your claim that the answer to the questions propounded would incriminate you, and I am now ready to hear any statement you desire to make.

Mrs. Sherman: I have information that Ned Sparks is an officer of the Communist Party. I also understand that the Federal government is accusing the Communist Party of advocating force and violence, and I feel that any connection that I may show in answering these questions may be a step in a chain which may prove, according to the government's contention, that I have connections with this organization which they claim advocates force and violence.

The Court: Well, now, in addition to those reasons is there any personal reason which you wish to state to me at this time which you do not wish to state in open court or otherwise?

Mrs. Sherman: No, your Honor.

The Court: There are none?

Mrs. Sherman: There are none.

The Court: Do you have any other statement to make?

Mrs. Sherman: No, I have not.

The Court: Very well. We will reconvene in the courtroom. [9]

* * * *

STATEMENT OF WITNESS PHILIP BOCK

(The following proceedings were had in chambers, as follows:)

The Court: The record will show that there is present the witness, Mr. Bock; Mr. Horn, the Clerk; Mr. Wahlberg, the reporter, and Mr. Hayden, the bailiff.

Mr. Bock, we have adjourned here in order to give you a chance to make any statement which you desire to make in addition to that which your counsel has made in open court which you think may aid the court in determining whether or not your refusal to answer the questions might tend to incriminate you. Do you have any statement to make?

Mr. Bock: Yes, I do. The Court: Very well.

Mr. Bock: The questions seem to me to lead to my knowledge and possible connection with either leaders or members of the Communist Party, and I am aware of the fact that there is a Federal trial pending on the subject of whether or not the Communist Party advocates—

The Court: Where?

Mr. Bock: In the Federal District Court of the Southern District of New York. [10]

The Court: That is the Foster case and the other cases that have been mentioned?

Mr. Bock: Yes.
The Court: Yes?

Mr. Bock: I am aware of that case. The Court: Are you a party to it?

Mr. Bock: No, sir.

The Court: Have you been named in connection with it?

Mr. Bock: No, sir. But I am aware that it seeks to establish that the Communist Party teaches the overthrow of the government by force and violence, and that if I knowingly had any membership in or connection with such an organization and followed the line, answered the line of questions which showed knowledge, that I might incriminate myself.

The Court: Do you have any other statement to make?

Mr. Bock: No, sir.

The Court: Are there any purely personal reasons other than those which you have stated which you think I should know which might tend to incriminate you in connection with the answers to these questions?

Mr. Bock: Well, the most personal thing that concerns me is my own freedom and I feel that there is a threat to it implied in answering those questions.

The Court: I mean other than that. Frequently people find themselves in the position where they know things that [11] nobody else knows. Do you wish to make a statement here?

Mr. Bock: Anything I may or may not know, I

feel that any disclosure to those questions might tend to incriminate me.

The Court: Then you do not have any other statements to make?

Mr. Bock: No, sir.

The Court: Very well. We will reconvene in the courtroom.

* * * *

STATEMENT OF WITNESS DOROTHY BASKIN FOREST

(The following proceedings were had in chambers, as follows:)

The Court: You are Mrs. Forest?

Mrs. Forest: That is right.

The Court: The record will show the presence of the bailiff, Mr. Hayden; the clerk, Mr. Horn, and the reporter, Mr. Wahlberg, as well as myself.

Mrs. Forest, we have reconvened in here in order that you may make a statement to me privately, if you desire, of any additional grounds or reasons why you think that the answers to the questions asked may incriminate you.

Mrs. Forest: Yes, I understand that.

The Court: Very well. Do you have a statement that you [12] wish to make to me?

Mrs. Forest: Yes, I do.

The reason I refuse to answer the questions put to me before the grand jury was because I thought the answers might tend to tie me up with the Communist Party or an officer of the Communist Party. I have information that Mr. Ned Sparks is an officer.

The Court: I do not think they asked you if Mr. Ned Sparks was a member. That was not read by the reporter.

Mrs. Forest: I don't remember at the moment. However, I do understand that the United States Government now contends that the Communist Party is an organization that advocates the overthrow of the government by force and violence, and I felt that I would not knowingly want to admit membership, want to admit knowing members in an organization that advocates the overthrow of the government.

The Court: They did not ask you if you were a member.

Mrs. Forest: Well, however, they did, in my opinion, attempt to tie me up with the Communist Party by asking questions pertaining to the Communist Party.

The Court: Do you have any other reason? If you do, if there are any private reasons which you wish to state to me privately here now, this is your opportunity.

Mrs. Forest: This is my personal statement.

The Court: Other than what you have stated you have—— [13]

Mrs. Forest: No additional statement, your Honor.

The Court: ——no additional personal or private reason?

Mrs. Forest: Nothing additional.

The Court: Very well. We will reconvene in the courtroom.

* * * *

STATEMENT OF WITNESS SAMUEL HARRY KASINOWITZ

(The following proceedings were had in chambers, as follows:)

The Court: The record will show Mr. Hayden, the bailiff; the clerk, Mr. Horn; the reporter, Mr. Wahlberg; myself and the witness, Mr. Kasinowitz.

Mr. Kasinowitz, this opportunity has been accorded to you to make any statement in addition to that made by your counsel or other than that made by your counsel in open court which you feel may justify you in refusing to answer the questions on the ground they might incriminate you. Now, do you wish to make a statement?

Mr. Kasinowitz: Yes, sir.

Well, sir, I took that position on the basis of the explanation which the government attorney made, and that was that he said if I felt that by answering the questions he asked me I would tend to place myself in—I forget his exact language.

The Court: Commit an offense against the Federal laws?

Mr. Kasinowitz: Place me in jeopardy or something, that I would have the right to refuse.

Well, I feel that on the basis of the knowledge that I have, first, that the Attorney General has ruled that the Communist Party is a subversive organization which has as its intent to overthrow the government of the United States by force; secondly, on the knowledge that I have through the public press that there were indictments handed down in New York against officials of the Communist Party.

The Court: You are referring now to the Foster and other indictments that were referred to by counsel?

Mr. Kasinowitz: Yes, sir.

The Court: Yes?

Mr. Kasinowitz: And that had I answered the questions that the government attorney put to me I would tend to show that I was in association, or might be in association, and thus might place myself——

The Court: With whom?

Mr. Kasinowitz: With these officials, the table of organization, or through the knowledge that I might have of the Communist Party.

The Court: The table of organization of the Los Angeles County Communist Party?

Mr. Kasinowitz: The question is, do you know the table. [15]

The Court: The names of the officers of the Los Angeles County Communist Party and the table of organization of the Los Angeles County Communist Party?

Mr. Kasinowitz: Yes, sir. In other words, on the basis of his explanation of the knowledge—I am not a lawyer; I don't know the law—but on the basis of the knowledge of what is transpiring, as far as I have been able to determine, I felt, and I feel, I am within his definition of self-incrimination.

The Court: Do you care to state which Federal statute you think you violated?

Mr. Kasinowitz: Well, no. I don't say I violated a Federal statute.

The Court: You think it might tend to show you violated one?

Mr. Kasinowitz: On the basis of the ruling of the Attorney General, that is, the subversive list, the so-called subversive list, and, secondly, the knowledge that I had through the public press of the indictment against twelve people who are supposed to be the leaders of the Communist Party, and from the public press the indictments propounded on the basis that they were members of the Communist Party, and as such tended to conspire, or whatever the case might be, to overthrow the government by force and violence. You understand, I am not an attorney. [16]

The Court: I understand.

You understand that you are appearing only as a witness and that he stated to you that it was not with the idea that you yourself should be investigated or proceeded against?

Mr. Kasinowitz: I understood his explanation.

The Court: I see. Do you have any other statement?

Mr. Kasinowitz: No, sir.

The Court: Is there any other purely personal

reason which you would like to state to me privately other than this explanation?

Mr. Kasinowitz: Well, I don't know whether this has any legality or weight before the court, but my personal interpretation, other than legal, of self-incrimination, or whatever the word is, by perhaps showing, by answering the questions in a certain way that I have such knowledge of the Communist Party, well, it would place me in jeopardy as far as the ability to earn a living is concerned.

The Court: You understand the grand jury proceedings are secret?

Mr. Kasinowitz: I understand that until I got here this morning and we had to rush through a barrage of newspaper photographers.

The Court: I mean what goes on inside the grand jury room.

Mr. Kasinowitz: Oh, yes, I understand that. But I [17] find, for example, that in tomorrow morning's edition of the Times I have got my face plastered all over the thing, and certainly that is not going to make my economic position any better.

The Court: Sometimes it may be unfortunate that those things happen but that is not a legal reason.

Mr. Kasinowitz: I say I don't know how much weight that will have.

The Court: That is not a legal reason. But occasionally people have some things which privately they know that other people do not and which they do not sometimes even wish to tell their

lawyers but which they will tell a judge which will convince him. Do you have anything of that nature at all?

Mr. Kasinowitz: No, sir.

The Court: Do you have anything else to say?

Mr. Kasinowitz: No, sir.

The Court: Very well. We will resume in the courtroom.

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STATEMENT OF WITNESS FRANK EDWARD ALEXANDER

(The following proceedings were had in chambers, as follows:)

The Court: The record will show that the reporter, Mr. Wahlberg, is present; Mr. Hayden, the bailiff, and Mr. Horn, [18] the clerk, and myself.

Mr. Alexander, we have adjourned in here in order that you might make any statement to me in addition to that already offered in open court in substantiation of your position that your answer to these questions might tend to incriminate you.

Do you want to make such a statement now? Mr. Alexander: Yes, I would.

In line with the question of the government officers that was asked of me, I feel that this would incriminate me on the ground that it would associate me with the—with these leaders, officers, and that since the attorney Tom Clark is attempting to prove that the Communist Party advocates the overthrow of the United States government, therefore I feel that this would tend to prove that I

knowingly am a member of the Communist Party.

The Court: And the other question?

Mr. Alexander: The same thing.

The Court: The same thing?

Mr. Alexander: Yes.

The Court: Now do you have any other reason such as purely personal reasons which you would like to state to me privately other than those that have been stated in open court?

Mr. Alexander: Nothing that I really wouldn't want to [19] state in open court.

The Court: Do you have any other grounds at all?

Mr. Alexander: No, sir.

The Court: Very well. We will reconvene in the courtroom.

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STATEMENT OF WITNESS HENRY STEINBERG

(The following proceedings were had in chambers, as follows:)

The Court: The record will show the presence of Mr. Hayden, the bailiff; Mr. Horn, the Clerk; Mr. Wahlberg, the reporter, and myself.

Mr. Steinberg, I have adjourned to chambers here in order that you might make any statement in addition to that which has been heretofore offered by your counsel, or other and different than that, in connection with your refusal to answer the questions on the ground that it might incriminate you.

Do you wish to make such a statement?

Mr. Steinberg: Yes, sir.

The reason I am not answering those questions, your Honor, is that this will tend to knowingly identify me with an organization that the government contends would overthrow the government by force and violence, and on that basis to [20] incriminate myself on those lines would be self-incriminatory.

The Court: Do you have any other statement to make?

Mr. Steinberg: No, sir.

The Court: Is there any personal reason, any purely personal reason other than that, which you wish to communicate to me and do not wish to communicate to anyone else?

Mr. Steinberg: No, sir.

The Court: Very well. We will reconvene in the courtroom. [21]

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

October 26, 1948—10:00 o'clock a.m.

The Court: Ex parte matters?

The Clerk: Yes, your Honor. Mr. McTernan has a matter.

Mr. McTernan: May it please the court, in connection with the matters that were determined last night, the 10 adjudications in attempt and commitment to the county jail, as your Honor knows we filed a notice of appeal with the clerk last night and advised the court that we wished to make a motion for bail.

The Court: I will have to defer that matter until the conclusion of my regular calendar and the impanelment of the jury in the trial. I will hear it when I finish the other matters that are on the calendar.

I imagine you have some question of law to urge in connection with it?

Mr. McTernan: We have, your Honor.

The Court: Very well.

* * * *

The Court: Mr. McTernan?

Mr. McTernan: If the court please, I appear before you this morning to make a motion for the setting of bail in the cases of the ten individuals who last night were adjudged in contempt and committed to the custody of the Attorney General until such time as they answer the questions propounded to them

before the grand jury. Because of the fact that I am not yet sure of the nature of the contempt proceeding which was conducted last night, whether it was criminal or civil in nature, I would like to make my motion in the alternative, that the court fix bail pending appeal, if that is the proper procedure, assuming that the contempt proceedings last night were criminal in nature; or, in the alternative, that the court stay execution of its judgment in the event that the proceedings last night were civil in nature.

As you know, a notice of appeal has been filed with the clerk. I don't want to take the time of the court to argue on this motion questions which were argued at length to you yesterday. I wish to point out, as I understand the question now, if we are moving for bail, that the court—

The Court: Or for a stay. The questions are both the same, whether or not there is a substantial question.

Mr. McTernan: Yes, your Honor.

I submit to your Honor that while government counsel will doubtless contend—

The Court: Excuse me, counsel.

Mr. Bailiff, will you get the Penfield case? I have forgotten the title of it. I think it is Securities and Exchange Commission v. Penfield, 322 or 323.

Mr. McTernan: Do you wish me to wait until you get it?

The Court: I want to get that case because I think it may settle for you the question as to whether or not it is a civil or criminal appeal or proceeding. You can go ahead in the meantime on the matter as to whether there is a substantial question.

Mr. McTernan: Yes.

I am sure it will be urged to you when I am through that this is an extremely grave and serious matter, that the proceedings and functioning of the grand jury were interfered with, and that the full process of the court should be used to prevent that.

Now against that I ask you to weigh this, that these people conceive that they have rights, that these rights are being violated, and they are entitled to a judicial determination as to the propriety and correctness of their position, and that the only way that they can have such a determination is to make an issue which can be determined, and they have done so by respectfully—and I think that the personal appearances of these people before your Honor last night must convince you that they were respectfully taking their position—that they intended no lawlessness in what they were doing, they were seriously of the opinion that they had rights which in due course would be vindicated, and we are now asking that the proper procedure be observed so that their right to have their positions vindicated or determined against them, as the outcome may be, will be an effective one and a real one, and that they will not be confined during the period when the questions are as yet undetermined.

We submit that the questions which we are to raise on appeal are of substance, are of importance, and should be determined and should be determined in a way which permits these people to have their liberty until the determination is reached.

I don't want to argue again the self-incrimination problem, your Honor, but I think it turns on the

difference between the Counselman case, on the one hand, and the Mason case on the other.

The Court: Has counsel taken into consideration the whole line of cases concerning officers of corporations, the case of United States v. White, in 322 U. S., decided in 1943, where officers of a labor union, an unincorporated organization, were subpoenaed before the grand jury to produce books and records, and they refused to do so, and the court sustained the judgment for contempt against them?

Mr. McTernan: I am familiar with that.

The Court: There they likewise claimed the privilege against self-incrimination, and so forth, and attempted to make a distinction between officers of an unincorporated association, such as a union, and urging there again the rights of assembly and organization, liberties of the First Amendment, and a corporation, that a corporation was a business instrumentality. But the court held that there was actually no distinction.

Mr. McTernan: Yes, I am familiar with those cases, your Honor, but I submit to you that they have no application to the issues which are presented here.

There is no showing in the examination before the grand jury, and there is no showing in any of the proceedings before your Honor, that any of these people were either members of or officers of or connected with the Communist Party, which is apparently the subject of the investigation.

These people are claiming the privilege for themselves based upon a possible tie-in with that organization, which the Attorney General has held and is prosecuting as per se an unlawful organization. They are seeking protection against the incrimination which comes from answering questions which might tie them in with that organization in such a way as to subject them to the risk of prosecution.

They are not saying that they don't have to submit or produce the books and records of an organization because this would incriminate them; they are not saying that they don't have to answer questions concerning their organizational connection with the Communist Party, because the privilege of the organization is available to them: they are saying that answers to these questions would connect them with an organization and incriminate them, subject them to a risk of prosecution, because of the position which the Attorney General has taken.

I submit to your Honor that the White case and those other cases do not apply to the facts that are before you here in this matter.

Against I submit that the question before your Honor now is not whether you agree with our position or not, the question is whether there is a reasonable possibility that your Honor may be wrong, that there may be a reversal upon appeal.

The Court: Pardon me. Is that lady a shorthand reporter? Are you taking shorthand notes?

A Spectator: No, I am not.

The Court: Very well. I just want to call attention to the fact that there is only one official reporter and only one permitted.

Mr. McTernan: I understand that to be the rule, your Honor.

The question here is whether there is a reasonable likelihood of reversal, of change, that your Honor may be wrong. We submit that there is a substantial question because of particularly the reliance of the government—and I believe the reliance of the court in reaching its conclusion yesterday—upon the Mason case which we submit to your Honor has been whittled away until it is nothing, and that the correct rule is the rule in the Counselman case and in the Mason case, and that we can convince the higher court that that is the correct rule and that it does apply to the facts of this case.

I spoke at length last night concerning what we consider to be the invalidity by its very nature of this grand jury inquiry because of the invasion of the rights guaranteed by the First Amendment. I have nothing to add to this point. But this too is a point which your Honor knows is in litigation in various courts of the United States now. It is a real question. It is a question which has not been finally determined, and it is a question which these appellants should have an opportunity to raise because of the way it hinges upon them and results in their incarceration.

We wish to urge further on appeal that these appellants were denied due process of law by the manner in which the proceedings were conducted, with particular reference to your Honor's denial of a continuance, especially your denial of a continuance on the contempt proceeding itself, which as your Honor will recall began about 10:45 p.m., following a long and lengthy day, in which, as we pointed out to you, counsel were not only tired out but had never had an opportunity reasonably to prepare for the serious charges which were brought and had no op-

portunity until that moment to know what objectives the government sought.

We submit that to be required to go to trial under circumstances such as that, when up until the eleventh hour, until the very beginning of the trial, if you will, there was no opportunity for the appellants to know what it was the government sought, denies them what has been described by the Supreme Court as the rudimentary requirements of fair play. The line of cases which includes the two Morgan cases are the cases which I specifically refer to.

We also wish to raise on appeal, your Honor, the improper selection of the grand jury and the availability of this challenge to persons in the position of these defendants. We submit to your Honor that this too is an open question and that this question has not been finally determined, and that there is no definitive nor authoritative statement of the law on the subject. There are cases pointing both ways. And if our contention is correct, as we read such cases as the Theil case, and the others—the names of which I don't recall now, but they were referred to here yesterday—

The Court: The Ballard case.

Mr. McTernan: Yes.

The Court: The Theil case.

Mr. McTernan: Yes.

These considerations go to the actual existence of the grand jury, to its power to act in any respect, and if it did not have the power to act in any respect then it did not have the power to ask these witnesses these questions and the power to compel them to answer these questions was lacking in the court, and therefore the power to punish was lacking.

Now these basically are the questions which we will raise on appeal. Again I state to your Honor the question here is not whether they are questions which your Honor would decide in our favor—your Honor has already decided all of these against us—the question is whether they are issues of substance, whether we raise a reasonable appeal.

I submit to you that the law on every one of these questions, if it does not point definitely in our direction so that your Honor was wrong on the cases as the law now stands, there is at least an open question on each of these matters and there is room for the intervention of an appellate court, and we therefore do raise questions of substance and we are, I believe, your Honor, in fairness entitled to either bail or a stay so that this right of appeal, which we have under the criminal rules, may be a real right, may be an effective right.

It would do little for these appellants if, having this right of appeal and having the substantial questions, they must remain in custody while the matter is being determined months hence.

After all, it is, as I understand it, fairly customary practice for the district courts to release persons who are convicted of serious crimes on bail pending appeal until the issues are determined. These people are certainly not in a position of common criminals, they have committed no offense involving moral turpitude, they have raised in the only way that they know how serious legal questions going to basic constitutional rights. There is nothing more fundamental

in our system than the privilege against self-incrimination and the rights under the First Amendment. All we are asking is an opportunity, really and effectively, to have these rights determined without being required to stay behind bars as the price of getting that determination.

Mr. Goldschein: May it please the court, this matter was argued quite at length, and all the questions raised by counsel for the witnesses this morning are repetition of yesterday, and I don't intend to take up the time of the court in answering that argument unless there is something specifically that the court wants to hear me on.

The Court: I think the court has to make a determination whether or not it is a civil contempt or a criminal contempt.

Under the Penfield case I do not know but what it is a civil contempt. That is reported in 330 U. S. 585. In that case the Securities & Exchange Commission issued a subpoena duces tecum under the authority of their law. It was disobeyed. They sought an order of court directing the defendant to produce the books.

After hearing the court made an order directing the defendant to produce the books. The defendant did not produce the books.

He appeared before the court, pleaded guilty to disobedience to the court's order. The court fined him \$50 and he paid it.

But the Securities and Exchange Commission appealed to the Supreme Court, and there the court held that the contempt was a suit in a civil nature and that the court was wrong in imposing any punitive measure upon the defendant and that the court

had the power only to use the coercive powers of the court, to-wit, to commit the defendant until he should produce the books.

Here in this case the witnesses were subpoenaed before the grand jury. They declined to answer the questions. The question was certified to the court. The court then made an order upon the defendants directing them to answer the questions. The analogy to the order of the court against the subpoenaed person in the Penfield case to produce the books. He refused to produce the books. They refused to answer the question. The court therefore used the coercive powers of the court and committed them to jail until they should answer the question.

For that reason, and I will so hold that it is a civil contempt, I will treat your notice of appeal here and your motion as a motion for stay of execution rather than for the fixing of bail.

Mr. Goldschein: That matter was discussed quite in detail in the United Mine Workers case.

The Court: Yes, which was decided the same day as the Penfield case. I think the Penfield case may have delayed the decision in the United Mine Workers case a little while trying to reconcile the two decisions. But in any event the Supreme Court reconciled them to their satisfaction, if not to others, and it is the law and I must follow it.

So I hold that it is a civil contempt proceeding and treat this as a motion for a stay of execution.

Coming now to the question as to whether or not the motion for the stay of execution should be granted, it turns on the question as to whether or not there is a substantial question raised. As counsel indicated, the points on which they expect to rely are those which were set forth in the motion yesterday set forth in writing and filed to challenge the grand jury and to quash the subpoenas.

The first point is as to the composition of the grand jury. I do not think that that is a substantial question. In fact, I think it is almost a frivolous question.

Mr. McTernan: Your Honor, I hesitate to interrupt, but we are not relying simply on the matters raised in this motion to quash. I have indicated other points.

The Court: I think that I have taken the other points as I come to them and I will try and touch on them.

Mr. McTernan: All right.

The Court: I think that that point, as to the composition of the grand jury, is a frivolous point. In United States v. Local 36 the question was tried before this court, extensive evidence was taken, testimony heard, and the question was presented by Mr. Margolis and the same firm of which Mr. McTernan is now or was then a member—I don't know which.

Mr. McTernan: Both, your Honor.

The Court —and it was thoroughly explored. The court wrote a long opinion.

The similar challenge was made before another judge of this court, a visiting judge, and both of us reached the same conclusion, that there was no systematic exclusion of any person or class or any of the categories which the Supreme Court referred to in United States v. Thiel or United States v. Ballard.

As to the second question, that the grand jury is

not conducting a bona fide investigation within the scope of its powers, which was set forth in the written motion yesterday, I do not think that is a substantial question because it states that it was instituted by the office of the Attorney General of the United States solely for political reasons and not for the bona fide purpose of investigating the commission of any crime.

The answer to that is this: there are laws upon the statute books. They are passed by Congress. It is the function and duty and power of the grand jury to conduct an inquisition or investigation. It is the function and duty, and sworn duty, of the Attorney General, the United States Attorney, and all officers of the Department of Justice, to enforce the law. It is the function and duty of persons who are citizens to be and appear before grand juries and to testify, unless the answer which they might give might incriminate them. Even assuming that some officer of the government might have some other motive or purpose, political or otherwise, that certainly is submerged—and I am not conceding that that is true—but even assuming it were true, it is submerged completely in the power which he has under his sworn duty to enforce the law.

So I do not think that that is a substantial question.

No. 3: That the moving parties are being denied due process by utilization of the process herein referred to under the Fifth Amendment to the Constitution in that they have been subpoenaed by action of the office of the Attorney General of the United States and his deputies and assistants, not for the purpose of conducting a bona fide grand jury investigation, but for the purpose of carrying out a plan and design to harass and annoy persons believed to be members of the Communist Party and to discriminatorily apply the law against such persons in such manner as to utilize every conceivable technical means of imposing punishment upon them. That point is a little bit obscure. It is a sort of a combination of charges and accusations that the office and functions and duties and powers of not only the grand jury but of the Attorney General, the power of the court for the issuance of subpoenas, are being misused for some purpose of taking personal satisfaction or imposing some personal inconvenience or punishment on people who may be in a position to know something and who may be in a position to give testimony.

Insofar as that is concerned, that feature of it is disposed of by what I said concerning point two.

Insofar as the other point which appears to be in here, and which was discussed at some length last night by Mr. McTernan—and I think also touched on by Mr. Margolis—that this is not an equal application of the law, that they are being denied equal protection of the law, I followed the argument closely in that connection and the theory generally seems to be, although it does not find whole support in all of the cases, that the due process clause and the Fifth Amendment carry with it the same provision which is put in the Fourteenth Amendment, but which is added in language which requires the equal protection of the laws to all persons. There is some occasional statement in the various cases that that does mean that. I do not think, however, that a reading

of all of the cases under the due process clause of the Constitution will convince one that that was the intention of the Supreme Court that it always meant that, that is to say, due process always meant that same thing that the equal protection clause means in the Fourteenth Amendment with regard to the power of the states.

But even assuming that it does, there is nothing to the point insofar as it is applied to these witnesses. Again, the grand jury is authorized and under a duty to investigate crime. Again, Congress has passed laws which must be enforced. Again, it is the sworn duty of the Attorney General and the United States Attorney to investigate crimes, to ascertain whether or not persons should be prosecuted. And, again, it is the duty of every citizen and every person in the United States to be a witness unless the answer to the question which is propounded to him might incriminate him.

As to that latter point, I came to the conclusion yesterday that insofar as the cases which counsel relied upon and the points and the authorities in his argument, that there could be no incrimination of any of these witnesses here by the answer of the questions which generally are, do you know the table of organization, do you know the officers, what is your occupation, and for whom are you an organizer. I cannot possibly see how the answer to any of those questions could possibly incriminate any of the witnesses who appeared here under the theory advanced by the defendants that the Attorney General now says that it is a violation of law to belong to the Communist Party.

This brings me again to the other point, which I think is your only other point which you touched upon, that the grand jury had no power to ask these questions because it would be a violation of the First Amendment, the right of free speech, the right of assembly, the right of association which is guaranteed by the First Amendment.

Again there I cannot possibly see how anyone can be excused from answering questions such as these that were asked by virtue of that amendment. There is no statute of the United States which makes it a crime to be a member of the Communist Party. There is a statute which says that if a person knowingly attempts or advocates the overthrow of the government of the United States by force and violence that it shall be an offense.

There are many cases, the Schneiderman case with partiular reference to that matter, which point out, and in fact there are very few cases and very few statutes which have come within my knowledge and experience, which do not have the requirement that guilt is personal regardless of what organization a person may belong to, that no statute can make the mere joining of an organization a crime, that they must be shown to have a personal guilt, a personal intent to destroy the government of the United States by force or violence, and the like. And such it seems to me is what is charged in the indictments, copies of which were submitted here yesterday and are on file in New York.

Insofar as the other questions touched on by counsel, I think that I have expressed my views very briefly and certainly not formally on them.

One other thing I would like to say in this connection, having recourse again to the statement which I made about the duty of the grand jury and the duty of the Attorney General, I know, as we all know, that there are statutes of limitation which Congress has placed in all of the statutes which place a limitation upon the period of time within which a person may be prosecuted for an offense. It is necessary, therefore, that the investigative arm of the government, whether it be the United States Attorney or whether it be the arm of the court, to-wit, the grand jury, that they should be able to proceed without obstruction. If questions such as this can be raised by these witnesses there is no reason why every person who is called as a witness before the grand jury concerning anything at all cannot come down and raise these identical questions, come before the court, take the time of the grand jury, take the time of everybody else, on every single question which they might raise, and then if the court should stay the execution of the court's judgment the statute of limitations would run and the laws on the books would become mockeries rather than statutes which are required to be observed with all of the dignity and power and majesty of the law which, after all, is supreme.

The motion for a stay of execution is denied. Court is adjourned until 2:00 o'clock.

(Whereupon, at 12:05 o'clock p.m., court was adjourned.)

[Endorsed]: Filed Nov. 10, 1948.

REPORTER'S TRANSCRIPT OF TESTIMONY

Los Angeles, California,

October 27, 1948; 10:00 o'clock a.m.

The Court: Ex parte?

The Clerk: Yes, your Honor. Mr. McTernan has a matter this morning.

Mr. McTernan: Your Honor please, we have presented and filed two motions with the clerk this morning. One is a motion to reconsider your denial of stay in the ten matters that were tried here Monday, and the other is a motion to vacate and set aside the sentence under Title 28 U. S. Code, Section 2255.

I notified Mr. Carter, the United States Attorney of this District, of my intention to file these motions, and gave him copies through Mr. Goldschein, about 9:35 this morning. They were advised that the matter would be taken up in open court this morning.

I don't see them here. I don't know what their intentions are.

If you wish me to ahead in their absence, I will proceed.

The Court: No. I have a criminal case for trial this morning and there is a panel of jurors here, the defendant is here, the lawyers are here, and they are ready for trial.

This matter of course is important to you, but every criminal case is important to the persons involved. I do not [288] know why I should extend special privilege to you or to your clients to give them

consideration over everybody else when the court's calendar has been set.

Mr. McTernan: I think this is a very short matter, your Honor. The motion under Section 2255 raises nothing new. It is more or less a formal step necessary, as I read the Code, to taking the matter before any judge of the Court of Appeals.

The motion for reconsideration does involve new matters, but I think it would not take very long to present them.

The Court: I will have to proceed with the calendar.

Mr. Wirin: May I be heard for a moment?

The Court: On this matter?

Mr. Wirin: It is on this matter.

The Court: I will have to proceed with the rest of the calendar and this case will have to be heard when I can hear it. Now I do not know when I can hear it.

Mr. Wirin: That is what I wanted to know. I wonder if your Honor could hear it at 1:30.

The Court: I sat here until midnight as a special consideration to the witnesses and everybody concerned, and yesterday I was advised I had violated the due process and the rights of the witnesses. So perhaps this matter just better take its regular course.

Mr. McTernan: We didn't ask for any special accommodation, your Honor. I would like the record to be clear on [289] that.

The Court: The record will show, however, that

most of the time was spent in listening to the arguments advanced on behalf of the witnesses.

Mr. McTernan: Which I assume we had the right to do.

The Court: Which you have a right to do and which right was extended.

Mr. Wirin: I have one further matter. When this court does set the matter I should like then to present an oral application to appear amicus for the court to consider at that time. I would like to appear as amicus to participate very briefly at the appropriate time.

The Court: I do not know anything about that. I suppose the United States Attorney ought to be here in connection with the whole matter.

Mr. Wirin: Yes, I would say so.

The Court: This matter will just have to await its place on the calendar. I do not know how long we will be in the trial of the criminal matter.

Mr. McTernan: Are you saying that this will have to wait until after the procedure of the trial?

The Court: I do not know. If I can find time between now and then I will hear it.

Any other ex parte matters?

The Clerk: No, your Honor. [290]

Los Angeles, California October 27, 1948; 12:05 o'clock p.m.

Mr. McTernan: Your Honor, before you leave the bench, will you hear me?

The Court: Yes.

Mr. McTernan: You ordered two persons, Mrs.

Forest and Mrs. Sherman, to surrender at noon today, having granted them a stay of execution from Monday night.

I have handed the clerk two affidavits, one by each of them, in support of an application for further stay because of their home necessities in connection with the care of their children.

Mrs. Sherman is the mother of two children, one a teen-age girl and one a girl of four years old. Her husband is a war veteran and is incapable of completely supporting the family and she has to help with the support. And there is need also for her at home to care for the children and give them the care to which they are entitled and which they require.

The Court: What does her husband do?

Mr. McTernan: I can find out for you. She is here.

Mrs. Sherman: It is in the statement there.

The Court: Is this the Forest affidavit?

Mr. McTernan: No, the Sherman affidavit.

The Court: I am reading the affidavit of Dorothy Baskin [292] Forest. What does her husband do?

Mr. McTernan: Her husband is out of the state.

The Court: What does he do? You are claiming hardship. Maybe he is a millionaire. What is his occupation?

Mr. McTernan: Your Honor, I am awfully sorry, but this involves the very questions that were involved before the grand jury. He is an organizer, and I can't answer "an organizer for what," but I can tell you from my own personal knowledge that his income is a very limited one. They are not in

position, as the affidavit states, to hire nurses or any other persons to care for the children.

The affidavit of Mrs. Forest shows the family was about to be re-united by Mrs. Forest and the child going where the husband is and living there, and this was interrupted by the service of the subpoena. She works part-time and cares for the child the rest of the time.

The Court: What is her part-time job?

Mr. McTernan: I am informed, your Honor, that this also involves the situation similar to that presented before the grand jury. She is engaged in organizational activities and cannot state what organizational activity. I know the facts concerning her limited income.

There is also in attendance, your Honor, if your Honor cares to inquire into the matter, a physician who is prepared to testify concerning the fact of children of tender years [293] when they are deprived of the care of their mother.

The Court: Maybe that is what is wrong with me. I was deprived of the care of my mother when I was of very tender years, and father too.

Mr. McTernan: I am very sorry, your Honor.

The Court: What is the occupation of the husband of Mariam Brooks Sherman? It states he is a commission salesman. What does he sell?

Mr. McTernan: Mrs. Sherman, will you step forward?

(Conference between attorney and client.)

Mr. McTernan: Mrs. Sherman advises me that

her husband is a commission salesman of restaurant equipment. Mrs. Sherman tells me that his average earnings are approximately \$40 a week.

The Court: Mr. Reporter, I understand that Mr. McTernan has ordered a transcript of the proceedings had the other night. Can you estimate when they will be finished?

The Reporter: By Monday morning at the latest, your Honor.

The Court: You have filed a notice of appeal. When did you expect to perfect your appeal

Mr. McTernan: We can perfect it, your Honor, very rapidly after the transcript is available. I imagine it would be a rather lengthy transcript, however.

The Court: Yes. I am sorry that the reporter could not [294] have gotten it out sooner, but there are facilities provided for getting a transcript immediately if counsel desire it. They could have ordered a daily copy transcript.

Mr. McTernan: We discussed that with the reporter, your Honor, and he said he was unable to turn out a daily copy until after midnight.

The Court: You have to order your daily copy in advance so that other reporters can be hired.

Mr. McTernan: We didn't anticipate that we were getting into the kind of session that occurred.

The Court: And the reporter, like the other attaches necessary in attendance on the court, has to devote his time to other litigation.

Mr. McTernan: Yes, I understand.

The Court: When, after the transcript is ready, will you have your appeal perfected

Mr. McTernan: Your Honor, I can assure the court that it will be prepared with all possible speed. I can't say definitely, but I should think it would take a couple of days. I know the transcript will be quite long, we went through a long number of hours, but I will do everything in my power to perfect the appeal as quickly as I can.

The Court: I will stay the execution of these two women solely on account of the fact that they are the mothers of children and have not yet made arrangements for their care. [295] I want to emphasize, however, that this is a civil contempt proceeding and, as the Supreme Court has said, they carry the key to jail in their pockets. Any time they want to get out all they have to do is comply with the order of the court. They are not committed for any definite period of time.

I will stay the execution as to these two women, that is to say, Mrs. Forest and Mrs. Sherman, until 6:00 o'clock next Monday, November 1st.

Mr. McTernan: Very well, your Honor. Thank you very much.

I would like to tell the court that I can't be sure that I can get my appeal perfected on Monday because I don't know when the transcript will be ready.

The Court: I will stay it until that time and give you an opportunity to get your transcript on appeal ready so that you may apply to the other court for any relief that you desire. Mr. McTernan: Your Honor, would you be willing to extend the stay a couple of days, because we will have to probably go to San Francisco.

The Court: There is a circuit judge available here at all times, I understand.

No, I would not extend it beyond that. I think they can make their arrangements in the meantime to find somebody to care for their children. Again I want to point out that they [296] carry the key to the jail in their pocket. They are not committed to jail for any definite period of time. I have passed on the legality of their objections here and it is a very simple thing for them to get out.

Mr. McTernan: They carry their constitutional rights in their hearts, too, your Honor.

The Court: Court is adjourned.

(Whereupon, at 12:15 o'clock p.m., court was adjourned.)

[Endorsed]: Filed Nov. 10, 1948. [197]

[Endorsed]: United States Court of Appeals for the Ninth Circuit. No. 12217. Samuel Harry Kasinowitz, Henry Steinberg, Ben Dobbs, Appellants, vs. United States of America, Appellee. No. 12221. Lillian Adele Doran, Phillip Bock, Irving Caress, Robert Blair, Merle Brodsky, Frank Spector, Appellants, vs. United States of America, Appellee. Transcript of Record. Appeals from the United States District Court for the Southern District of California, Central Division.

Filed: April 7, 1949.

/s/ PAUL P. O'BRIEN,

Clerk, United States Court of Appeals for the Ninth Circuit.